

NEBRASKA LEGAL ASSISTANCE PROGRAM STATEWIDE STANDARDS



Effective July 2012
(Revised July 2016)

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Division of Medicaid and Long Term Care – State Unit on Aging
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NEBRASKA
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DEPT. OF HEALTH AND HUMAN SERVICES

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INTRODUCTION AND BACKGROUND

In anticipation of the reauthorization of the Older Americans Act (OAA) and implementation of the Model Approaches to Statewide Legal Assistance Systems Grant (Model Approaches Grant), and in recognition of: the need to coordinate Title IIIB legal assistance and ElderAccessLine® services and to coordinate both with the broader legal services network; the need to integrate legal services into the aging network; and, the lack of established statewide legal standards, the Legal Services Developer proposed to the Elder Rights Coalition (ERC) members, the need to develop statewide legal standards. At the July 2010 ERC meeting, the members endorsed the project. The Developer then organized a working meeting and invited members of the ERC, all AAA directors, and all IIIB legal providers. In addition, other interested organizations were invited, including the Nebraska Domestic Violence Program, Attorney General's Abuse in Later Life Grant, and the Administration on Aging officials and The Center for Social Gerontology.

The working meeting was scheduled for January 5, 2011. Its purpose was to explore strengths and weaknesses in Nebraska's current legal delivery system and begin the discussion among key players of what is needed to move Nebraska toward the type of system envisioned for Model Approaches states. (The list of Work Group participants is included in Appendix 1.)

MISSION AND PURPOSE OF STATEWIDE STANDARDS

The Nebraska Legal Assistance Program Statewide Standards for Nebraska have been developed to ensure that the key partners – State Legal Services Developer, Area Agencies on Aging, Title IIIB Legal Services Providers and the ElderAccessLine® – work together to assure the delivery of high quality, high impact services designed to address the most critical legal needs of older Nebraskans in greatest economic or social need. The guiding principle in these standards is that Nebraska legal assistance program is not a legal program for all older persons at all times for all issues, rather it is targeted to ensure that those seniors who are most vulnerable and who are at risk of losing their autonomy, dignity or independence have access to critical legal assistance. To accomplish these goals, these standards can only be successful if the providers of legal assistance, Area Agencies on Aging, State Legal Services Developer and the ElderAccessLine® work together.

Based on discussions with the Standards Work Group the **goal** for statewide legal standards is to ensure that the key partners -- State Legal Services Developer, Area Agencies on Aging, III B Legal Service Providers and the

ElderAccessLine® -- work together to assure the delivery of high quality, high impact services designed to address the most critical legal needs of vulnerable older Nebraskans. Further, the **purpose** of standards is to provide guidance to the key players on building and maintaining a delivery system designed to –

- **target** limited OAA legal resources to those in greatest need of assistance and those least able to advocate on their own behalf;
- **give priority** to legal issues that reflect the most critical needs of the target populations;
- **coordinate** resources and services of the ElderAccessLine® and III B legal providers for maximum impact from limited OAA resources;
- **coordinate with, and work to expand** other legal resources for older persons across Nebraska;
- **integrate** legal services into the broad aging service network.

Further, statewide legal standards should help ensure the various mandates outlined in the OAA are carried out by defining roles and responsibilities of the State Unit on Aging/Developer, Area Agencies on Aging, the Title IIIB Legal Services Providers (LSP), and the ElderAccessLine®.

(Note: This draft of statewide standards for delivery of legal assistance is a result of the January 5, 2011 meeting, follow-up conference calls with the Legal Standards work group and a meeting with the Nebraska AAA Directors on January 10, 2012.

LEGAL AUTHORITY

The Older Americans Act of 1965 as amended, designates Legal Assistance as one of three priority services under Title IIIB¹. As such, the funding of legal assistance by each of Nebraska's eight AAAs is mandatory, and the level of funding must be at least at a minimum percentage of each AAA's IIIB funds as established by the State Unit on Aging (SUA).² In both Titles III³ and VII (Chapter 4)⁴ the OAA calls on each SUA to assign personnel to provide State leadership on legal assistance throughout the state. Also important to note is that the OAA includes a targeting component as part of the definition of legal assistance. It is defined (in part) as " . . . legal

¹ (42 USC §3026(a)(2))

² (42 USC §3027(a)(2)(C)) The minimum percentage for Nebraska AAAs is 2% of IIIB funds as of October 2011

³ 42 USC §3027(a)(13)

⁴ 42 USC §3058j

advice and representation provided by an attorney to older individuals with economic or social needs; and . . .”⁵ (Emphasis added)

These statewide legal standards will be amended periodically to reflect changes made through future reauthorizations of the OAA and other governing state and federal laws and regulations as well as changes in the legal needs of older Nebraskans experiencing social or economic need.

STANDARDS FOR TARGETING SCARCE RESOURCES: TARGET POPULATIONS

Background: As originally conceived in 1965, the OAA was to address needs of all older persons. Since that time however, federal dollars have become increasingly scarce and the overall well being of many older persons has improved. Thus with each reauthorization, Congress has strengthened provisions regarding the need to target scarce resources for all OAA services. Currently, numerous provisions in the Act direct that all services, including legal, be targeted to those older persons who are in greatest social or economic need, *“with particular attention to low-income older individuals, including low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas.”*⁶ These targeting requirements are especially relevant to legal assistance given that legal assistance is defined in the Act as being for older persons in social or economic need.

The AAAs, IIIB legal providers, and the ElderAccessLine® shall, in consultation with the State legal Services Developer, jointly develop plans to target legal assistance services to the particularly needy persons described above. Within these groups the AAAs and legal providers, in consultation with the Legal Services Developer, shall jointly identify those sub-groups of elders who are most vulnerable and in need of legal assistance. In identifying and developing plans to reach and serve the most vulnerable elders, the groups listed below shall be considered.

- (1) Older rural residents with limited access to services.
- (2) Older residents in long-term care facilities.
- (3) Older persons with caregivers.
- (4) Low income older persons.

⁵ 42 USC §3002(33)

⁶ See for example, 42 USC §§ 3026(a)(1), 3026(a)(4), 3027(a)(16).

- (5) Older persons with no children or with children who are not a resource for assistance.
- (6) Older persons with emerging cognitive disabilities.
- (7) Older persons caring for grandchildren or for children who have disabilities.
- (8) Older persons with mental illness, substance abuse, developmental disabilities or physical disabilities.
- (9) Older homeless persons.
- (10) Older minority populations including immigrants, Native Americans, those with limited English proficiency, and LGBT individuals.
- (11) Older Veterans.
- (12) Older persons receiving home and community-based care.
- (13) Victims of elder abuse and domestic violence.
- (14) Older persons recently released from incarceration.

PRIORITY ISSUES

The OAA is clear regarding who should be targeted for service given the scarce resources available for legal assistance. At the same time, however, the law, regulations, and legislative history are equally clear that using income and resources/assets to determine who shall be eligible to receive legal services under Title IIIB (i.e. means testing) is prohibited.⁷ This does not preclude a legal provider from asking about a person's income/ assets as part of the process of providing legal assistance, or for the purpose of identifying additional resources and benefits for which an older person may be eligible. Rather it precludes it for purposes of denying services to the older person.

⁷ Best Practices Notes on Delivery of Legal Assistance to Older Persons, Vol. 12, NOS. 1 & 2, November 2003, The Center for Social Gerontology, Ann Arbor, Michigan.

MEANS TESTING PROHIBITION: UNDER NO CIRCUMSTANCES SHALL A PERSON 60 YEARS OF AGE OR OLDER BE DENIED LEGAL SERVICES ON THE BASIS OF HIS OR HER INCOME OR ASSETS

This creates a dilemma of how to target particularly needy elders without means testing. One effective method for achieving targeting without means testing is to establish particular legal issue areas that need to receive priority in “marketing and delivering” services, and these priority legal issues should reflect the most critical legal needs of the target populations.

The Older Americans Act specifies that AAAs and legal providers shall give priority to legal assistance related to:

- Income
- Health care
- Long term care
- Nutrition
- Housing and utilities
- Protective Services
- Defense of guardianship (i.e. defending an older person against the imposition of guardianship)
- Abuse, Neglect and exploitation
- Age Discrimination.

The State Unit on Aging, Area Agencies on Aging, III B legal providers and Elder Access Line have identified the following issue areas as most critical to meeting the needs of the target populations and therefore, these shall be priority issue areas under the broad categories above as mandated in the OAA.

Income Maintenance/Nutrition/Benefits

Social Security and Supplemental Security Income
SNAP (formerly Food Stamps)

Guardianship/Abuse/Neglect

Defending an Older Person Against Guardianship/
Conservatorship
Elder Abuse Neglect and Exploitation
Durable Power of Attorney
Health Care Power of Attorney
Living Wills

Consumer Protection/Financial Issues

- Collections (Protection of exempt income and assets; reduction of abuse from collection companies)

- Bankruptcy

- Foreclosure

- Consumer Frauds and Scams

- Unfair Sales Practices

Health/Long-term Care/Home Care

- Medicare

- Medicaid

- Medicaid Waiver

- Title XX Services

- Nursing Home (Personal Care Home, Quality of Care & Residents' Rights Issues)

Housing

- Subsidized Housing

- Homestead Property Tax Exemptions

- Home ownership, foreclosure,

- Utility shut offs/energy issues

- Landlord/Tenant

Individual Rights

- Age Discrimination - Employees, credit and housing. (In the employment area, assistance should be limited to assisting seniors in recognizing when an issue is appropriate for referral to the U.S. Equal Employment Opportunity Commission or the Nebraska Equal Opportunity Commission)

- American with Disabilities Act: housing

- Grandparent Rights

- Divorce (impacting income, benefits or abusive situations)

Other

- Simple Wills

- Affidavits of Small Estates

Where a client and the legal issue are in different PSAs, the residence of the client controls which legal assistance provider serves the client.

MECHANISMS FOR REACHING TARGETED GROUPS AND ADDRESSING PRIORITY ISSUES

The AAAs, Legal Services Providers (LSPs), ElderAccessLine®, and the SUA/developer shall develop plans and mechanisms for reaching the targeted groups, and informing them about services on the priority issue areas listed above. In developing such plans and mechanisms, it is important to address the following:

1. Access

It is the goal of the AAAs, LSPs and the SUA that older Nebraskans, especially those in the target population groups, have access to legal services. It is, therefore, the goal that the legal services be available and accessible throughout the PSA for each AAA, particularly in areas where target populations are located. Each LSP shall include in its application for Title IIIB funds, and each AAA shall include in its Area Plan, a plan for achieving these goals.

2. Outreach

Outreach is key to implementing targeting and setting priority issues. Strategically focused outreach to target populations can help LSPs, AAAs and the ElderAccessLine® in reaching the most vulnerable elderly. “First-come-first-serve” is the result of unfocused outreach.

AAAs, LSPs and the ElderAccessLine® should conduct outreach where the targeted populations are and develop relationships for secondary referrals from groups which serve the targeted populations. As the face of the aging population changes, revisiting plans will be crucial in order to ensure effective outreach to the most vulnerable populations. Examples of possible secondary referral resources for some of the target populations are listed below.

(1) Rural residents with less access to services

- churches
- beauty salons
- senior centers
- doctor offices
- Curves (gyms catering to older clients)
- radio
- local newspapers
- neighbors, people they trust
- county bar association

- lunch and listen at court houses with court house employees
 - Farm Bureau
 - Farmers Union
 - Center for Rural Affairs
 - state and county fairs
 - Husker Harvest Days
 - UNL Extension Service
- (2) **Residents in long-term care facilities**
- social services staff and directors
 - friends and family
 - ombudsman
 - resident councils
 - churches, pastors
 - CNAs
 - direct care staff
 - nursing schools
 - human services departments
 - county bar association
- (3) **Persons with care givers**
- care giver conferences
 - care giver fairs
 - care giver support groups (e.g., Alzheimer's Association)
- (4) **Low income persons**
- Newly low income are less likely to know about/seek assistance
 - clergy
 - funeral directors (for newly widowed persons)
 - rural or urban health clinics
 - Food pantries
- (6) **Persons caring for grandchildren, or for children who have disabilities**
- various support groups
 - local media
 - local gathering places—'informal senior centers' (e.g., diners)
 - grandparent resource centers
- (7) **Persons receiving home and community-based care**
- Meals on Wheels (including information they could use)
 - radio
 - mail delivery person
 - visiting nurses

- medical equipment delivery people
 - churches—home visits
 - home companions
 - respite workers
- (8) **Persons with no children or with children who are not a resource for assistance**
- Meals on Wheels (including information they could use)
 - AM radio
 - mail delivery person
 - visiting nurses
 - medical equipment delivery people
 - churches—home visits
 - home companions
 - respite workers
- (9) **Minority populations, including immigrants, Native Americans, Limited English proficiency and LGBT persons**
- community centers geared to particular target groups
 - benefits counselors
 - churches
 - radio
 - immigration attorneys
 - Nebraska Appleseed
 - Parent groups at local schools

ROLES AND RESPONSIBILITIES

As stated, the goal of these standards is to ensure that the key partners – State Legal Services Developer, Area Agencies on Aging, IIIB Legal Service Providers and the ElderAccessLine® work together to assure the delivery of high quality, high impact services designed to address the most critical legal needs of the most vulnerable older Nebraskans. The following roles and responsibilities of these four key partners are set forth to achieve this goal.

I. STATE UNIT ON AGING AND STATE LEGAL SERVICES DEVELOPER ROLE AND RESPONSIBILITIES

A. STATE UNIT ON AGING ROLE AND RESPONSIBILITIES

Under Title VII of the Older Americans Act, the State Unit on Aging is required to “provide an individual who shall be known as a State Legal

Assistance Developer, and the services of other personnel, sufficient to ensure –

- 1) State leadership in securing and maintaining the legal rights of older individuals;
- 2) State capacity for coordinating the provision of legal assistance;
- 3) State Capacity to provide technical assistance, training, and other supportive functions to area agencies on aging, legal assistance providers, ombudsmen, and other persons, as appropriate.
- 4) State capacity to promote financial management services to older individuals at risk of conservatorship;
- 5) State capacity to assist older individuals in understanding their rights, exercising choices, benefiting from services and opportunities authorized by law, and maintaining the rights of older individuals at risk of guardianship; and
- 6) State capacity to improve the quality and quantity of legal services provided to older individuals.”⁸

In addition, the State Unit on Aging is required, under the OAA, to set a minimum percentage of Title IIIB funds to be expended by each Area Agency on Aging for each of the three priority services: 1) access, 2) in-home, and 3) legal services⁹. The minimum percentage for legal services in Nebraska as of October 2011 is 2%.

Further, as stipulated under OAA Section 307(a)(2)(A) the State Plan must provide that the SUA will evaluate the need for supportive services, including legal assistance and Section 307(a)(11)(A) requires that the State Plan provide assurances that AAAs will enter into contracts with providers of legal assistance which can demonstrate experience or capacity to deliver legal assistance. The primary requirements of the providers are those listed in Section 307(a)(11) of OAA. Among other things, these provisions require AAAs to contract with legal assistance providers who: 1) can best demonstrate the ability, experience and capacity to deliver legal assistance; 2) will be subject to the specific restrictions and regulations promulgated under the Legal Services Corporation Act as determined appropriate by the Assistant Secretary for Aging; and 3) work with the private bar in providing legal assistance to the aging population. Additionally, the State Plan is to insure that when AAAs contract with LSPs who are not Legal Services Corporation grantees, the IIIB provider must have agreed to coordinate services with existing Legal Services Corporation grantee in the area in order to concentrate IIIB funds on older persons with greatest economic or social need.

⁸ 42 U.S.C. 3058j

⁹ 42 U.S.C. §3027(a)(2)(C)

Finally, the State has the responsibility of making certain AAAs and the LSPs comply with applicable Federal and Nebraska law in the delivery of service. Of primary concern is the definition of legal assistance under the OAA. The OAA defines legal assistance as

*"(A) . . . legal advice and representation provided by an attorney to older individuals 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 non-lawyer where permitted by law."*

Thus under the OAA as well as Nebraska law, legal assistance by a paralegal or law student must be under the direct supervision of an attorney. Non-lawyers may provide advice and representation where permitted by law, for example in such matters as Medicare (Title XVIII), Social Security (Title II), SSI (Title XVI) under the Social Security Act, and for appeals to Nebraska Department of Health and Human Services for Food Stamps (now SNAP), Medicaid and unemployment. All such representation must be consistent with the unauthorized practice of law rules.

B. ROLES AND RESPONSIBILITIES OF THE LEGAL SERVICES DEVELOPER

- The Legal Services Developer shall develop working relationships, as necessary, with relevant state and federal agencies with respect to the legal needs of older individuals in order to better coordinate legal services available to the elderly.
- The Developer, in cooperation with the Area Agencies on Aging, Legal Assistance Providers and the ElderAccessLine® shall work to assure that Title III B funds or other funds as contracted through the Area Agency on Aging are used to maintain or increase, to the extent practicable, the level of legal assistance furnished to economically or socially needy older individuals, and to assure that Title III B funds are not used to supplant funds from other federal or non-federal sources.
- The Legal Services Developer shall supply each LSP with technical assistance and guidance as may be necessary or requested by the Area Agency or Legal Assistance Provider.
- In cooperation with Area Agencies on Aging, LSPs and the ElderAccessLine®, the Legal Services Developer will assist in coordinating Title IIIB and ElderAccessLine® resources.

- The Legal Services Developer will work with the AAAs and legal providers toward making direct representation of targeted clients on priority legal issues the primary focus of the Title IIIB LSP's role.
- The Legal Services Developer will work with the AAAs, LSPs and the ElderAccessLine® toward developing non-OAA resources such as pro bono panel and reduced fee services.
- The Legal Services Developer will work with the AAAs and LSPs toward developing a public benefits and legal issues screening checklist. The screening checklist would include issues such as Medicaid, Medicare, and other public benefits programs.

Training Responsibilities of the Legal Services Developer:

1. The Legal Services Developer shall work with the Nebraska State Bar Association, the Legal Service Corporation grantees, Nebraska Continuing Legal Education and others to ensure that training is available to LSPs in areas of law relevant to the Title IIIB legal assistance contract and the priority areas.
2. The Developer shall work with LSPs, AAAs and the ElderAccessLine®, to arrange low or no cost legal training for professionals and consumers as needed.

Developer Responsibilities Regarding Implementing and Updating the Standards

1. The Developer shall work with the AAs and LSPs to develop discussion groups regarding these standards and their implementation.
2. The Developer shall work with the AAAs to procure the funding necessary for LSPs to meet these standards.
3. The Developer shall periodically review and update these Standards, with input from the AAAs and the ElderAccessLine®, and shall provide training on the application of the Standards to AAAs, LSPs and the ElderAccessLine®.

Developer Responsibilities Regarding Monitoring and Reporting:

1. The Developer shall work with the AAAs, the LSPs and the ElderAccessLine® in developing and utilizing statewide reporting, and shall compile and furnish to AAAs and LSPs a report reflecting the status of legal assistance in each area and throughout the state as a whole with respect to units of service provided in the contracted areas and individual program accomplishments.
2. The Developer will work with AAAs, the LSPs, and the ElderAccessLine® to revise the current reporting system.
3. In conjunction with AAAs, the LSPs, and the ElderAccessLine®, the Developer shall develop a monitoring tool. The monitoring system shall be designed in such a way as to protect the confidential nature of the assistance provided to clients as well as client identities.

II. ROLE AND RESPONSIBILITIES OF THE ELDERACCESSLINE®

Comply with the rules of professional conduct of the Nebraska State Bar.

- All Attorneys providing advice and assistance on the ElderAccessLine® must be licensed to practice law in the State of Nebraska and must be covered by malpractice insurance.
- All legal staff, other than licensed attorneys, operating within the ElderAccessLine® must do so under the direct and regular supervision of a licensed attorney. Where more than one attorney has responsibility for service provision under the ElderAccessLine®, a lead resource attorney must be identified.
- Work closely with the Legal Services Developer on the development of the LSP annual service and outreach plan.
- Adhere to the standards set forth in this document and any amendments thereto.
- Work closely with the Legal Services Developer to develop a method for surveying client satisfaction. Such method shall respect the client's right to confidentiality.
- Provide complete and accurate program data to the Legal Services Developer in a timely manner and provide additional information as

may be requested by the State Legal Services Developer, while maintaining client confidentiality.

- Work with the Legal Services Developer, AAAs, and legal service providers in developing and utilizing a new statewide reporting system on legal assistance.
- For all appropriate staff, have reasonable access to relevant research tools.
- Use Title IIIB funds or other funds as contracted from the SUA or the AAA's 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.
- Conduct outreach and education to the target groups on their most critical legal needs.
- Provide referrals to Title IIIB LSPs or other referral resources such as Volunteer Lawyers Program, Creighton Legal Clinic, or the University of Nebraska, Lincoln, Legal Clinic.
- Supply clients with a mechanism for filing complaints or grievances about the operation of the program.
- Provide counseling and advice as well as brief legal services to socially and economically needy elder callers.
- Work with the Legal Services Developer, AAA's and LSPs in the coordination of the Title IIIB and ElderAccessLine®.

III. ROLE AND RESPONSIBILITIES OF THE AREA AGENCIES ON AGING

A. General Area Agency Requirements

Area Agencies on Aging play key roles throughout Nebraska in creating and providing services to meet the needs of older Nebraskans. They also play key roles in linking those services together to meet client needs. AAAs shall work with LSPs, the ElderAccessLine® and the Legal Services Developer to provide leadership in dealing with the legal assistance needs of the older Nebraskans in their planning and service areas. This leadership shall extend to overall planning, advocacy,

coordination of services, interagency linkages, information sharing, brokering, monitoring, evaluation and support to insure the integration of legal assistance into the rest of the area's aging network and to insure that the focus of legal assistance is consistent with agency identified goals, and is directed to reaching and serving the target populations and in the priority legal issue areas identified in these standards.

B. Specific Area Agency Requirements

With respect to legal assistance each Area Agency on Aging shall:

1. Select the LSP that is best able to meet the needs of socially and economically needy older person in its planning and service area, and that is best able to demonstrate the experience and capacity to meet the requirements of federal and state law and regulations as well as the requirements of these Standards.
2. Adhere to the standards set forth in this document and any amendments thereto.
3. Insure that all attorneys, paralegals and other non-lawyers involved in providing Title IIIB legal assistance in Nebraska be able to demonstrate a commitment to providing those services by developing the expertise in the priority issue areas necessary to provide effective administrative and judicial representation to older persons in social or economic need.
4. Work with their providers and the developer to assure that all attorneys (including retired, volunteer attorneys) are licensed to practice law in Nebraska and that all attorneys (including retired, volunteer attorneys) and paralegals are covered by malpractice insurance in an amount established in consultation with the LSP, the ElderAccessLine® and the Legal Services Developer. Insure that they follow the code of professional responsibility.
5. Work with their providers and the developer to assure that all paralegals/legal assistants who provide client services are supervised directly by an attorney, and that all paralegals/legal assistants adhere to the Code of Ethics and Professional Responsibility of the National Association of Legal Assistants, Inc.
6. Work with their providers and the developer to assure that non-lawyers involved in providing legal assistance are not giving legal

advice or providing legal representation beyond what is allowed by federal or state law.

7. Work with their providers and the developer to assure that all program staff (title IIIB attorneys and paralegals) attends one training each year relevant to the Title IIIB Legal assistance contract and give notice to their providers of training opportunities made available through the developer. If the program staff is not able to meet this requirement, the AAA shall insure that the program submits to the AAA a plan for meeting the training obligation along with a planned completion date. The AAA may waive the training requirement for a LSP if, after consultation with the Legal Services Developer, it determines that the proposed training would not benefit that particular provider.
8. Work with their providers and the Legal Services Developer in developing a public benefits and legal issues screening checklist.
9. Work with their providers and the developer to assure that the IIIB LSP provides clients with the opportunity to make a voluntary contribution to the cost of the legal services they received, that all contributions received from Title IIIB clients are used to expand the legal assistance program, and that they are not awarded to individual staff. Insure that the LSP's policy and procedure is in compliance with Sec. 315(b) of the OAA and does not condition future assistance on the client's willingness or unwillingness to make a contribution.
10. Work with the LSP and the Legal Services Developer in developing and utilizing a system for determining client satisfaction. Any such system shall include a process protecting client confidentiality, including client identifying information. The system shall also include a process for analysis of the results and mutual sharing of the results with the LSP and the Legal Services Developer.
11. Work with the LSP and the Legal Services Developer in developing and utilizing a process for managing case load size to allow for adequate handling of accepted cases. The process shall account for the complexity of cases, priority issues, target populations and risk of physical and financial harm to the potential clients.
12. Work with the LSP and obtain input from the Legal Services Developer to assess and develop local program plans for reaching the target populations and addressing the priority issue areas.

These plans shall be reviewed on an annual basis and submitted as part of the AAA's Area Plan and the plan for providing legal services.

13. Review reports submitted by the LSP to insure that the target populations are being served and that the priority issues are being handled.
14. Work with the Legal Services Developer and legal service providers in developing and utilizing a new statewide reporting system on legal assistance.
15. Ensure that the programs are funded in accordance with federal and state requirements and that legal assistance is available throughout the planning and service area.
16. Work with the developer and legal provider toward making direct representation of targeted clients on priority legal issue the primary focus of the Title IIIB LSP's role.
17. Work with the Legal Services Developer to review and approve, through the area plan process, the provider program policy and protocol for referral of fee generating cases as required in these standards.
18. In conjunction with the LSP, attempt to involve 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. The AAA's role in this coordination should be to provide the private bar with information about local aging programs and services and to increase the awareness within the local bar about the needs of economically and socially needy older persons in their area.

IV. ROLE AND RESPONSIBILITIES OF LEGAL SERVICES PROVIDERS

The primary role of LSPs is to provide the highest quality, direct service to the clients in social or economic need that is possible. The legal assistance programs in each of the eight planning and service areas for the state are unique. Depending on the model used, some LSPs may have the capacity to provide the full triad of legal advocacy services which promote the zealous representations of clients required by the Code of Professional Responsibility of the Nebraska State Bar Association, including litigation, administrative

representation and legislative advocacy. While other models may not have this capacity, every effort should be made to move toward the full triad of legal services stated above.

A. PROVIDER STAFFING REQUIREMENTS

In order to meet the requirements of legal assistance in the OAA:

1. Each program must work toward providing clients in social or economic need with access at no cost to the client to attorneys with the capacity to provide advice and representation, including judicial and administrative representation, in the priority issue areas outlined in this document.
2. All attorneys, paralegals and other non-lawyers involved in providing Title IIIB legal assistance in Nebraska must be able to demonstrate a commitment to providing those services by developing the expertise in the priority issue areas necessary to provide effective administrative and judicial representation in those areas.
3. All attorneys (including retired, volunteer attorneys) are licensed to practice in Nebraska and that all attorneys (including retired, volunteer attorneys) and paralegals are covered by malpractice insurance in an amount established in consultation with the AAA, the ElderAccessLine® and the Legal Services Developer.
4. All paralegals/legal assistants who are involved in providing legal advice and representation to clients must be under the direct supervision of an attorney and adhere to the Code of Ethics and Professional Responsibility of the National Association of Legal Assistants, Inc.
5. All others involved in providing information on legal services must refer all legal matters beyond giving general information about public benefits programs and assisting clients with applications for such benefits to a program paralegal or a program attorney.
6. All program staff (Title IIIB attorneys and paralegals) must attend one training each year relevant to the Title IIIB Legal Assistance contract. If program staff is not able to meet the yearly training requirement, each program must send the AAA and Developer its plan to meet the training obligation along with a planned completion date. Training may be waived by the AAA and

Developer if both a satisfied that the proposed training would not benefit that particular individual.

B. GENERAL PROVIDER REQUIREMENTS

Each LSP shall...

1. Provide in-home visits to home-bound clients, including visits to long term care facilities as needed.
2. At the close of a case, provide clients with the opportunity to make a voluntary contribution to the cost of the legal services they received and insure privacy with regard to the client's willingness or unwillingness to contribute to the program and with regard to the amount of any contribution. All contributions from Title IIIB clients shall be used to expand the legal assistance program and shall not be awarded to individual staff. Each LSP must develop and adhere to policy and procedure that is in compliance with Sec. 315(b) of the OAA and all clients must be clearly informed that future assistance is not conditioned on their willingness or unwillingness to make a contribution (this provision does not apply to the ElderAccessLine® at this time).
3. Work with the AAA and the Legal Services Developer in developing and utilizing a system for determining client satisfaction. Any such system shall include a process for protecting client confidentiality, including client identifying information. The system shall also include a process for analysis of the results and mutual sharing of the results with the AAA and the Legal Services Developer.
4. Work with the AAA and the Legal Services Developer in developing and utilizing a process for managing case load size to allow for adequate handling of accepted cases. The process shall account for the complexity of cases, priority issues, target populations and risk of physical and financial harm to the potential clients. Each LSP shall also develop a process for establishing and handling a waiting list of clients for low priority issue areas.
5. Adhere to the standards set forth in this document and any amendments thereto.
6. Work with the AAA and obtain input from the Legal Services Developer to assess and develop local program plans for reaching the target populations and addressing the priority issue areas.

These plans shall be reviewed and revised on an annual basis and submitted to the AAA to be included in the AAA's Area Plan and the plan for providing legal services.

7. At a minimum, provide three levels of services: 1) advice and consultation, 2) brief services; and 3) referral for more in-depth services. Some service models may have the capacity for the LSP to provide effective and high quality judicial and administrative representation for eligible individuals in the priority issue areas in addition to the minimum three levels of services.
8. Use Title IIIB funds or other funds as contracted for from the AAA to maintain or increase, to the extent practicable, the level of legal assistance furnished to eligible individuals, and not use Title IIIB funds to support other programs and services.
9. Not condition providing legal services to any person 60 years of age or older on their income or resources. The LSP may question the client about financial circumstances as a part of the process of providing legal advice, counsel and representation, identifying additional resources to which the client may be entitled or to assist in targeting clients with greatest social and economic need.
10. Not subcontract any interest or obligation arising under a Title IIIB contract without written agreement of the Area Agency on Aging.
11. Have ready access to a law library and relevant USCA and CFRs, local laws and regulations, the Nebraska Revised Statutes and relevant state regulations, manuals for relevant government programs, relevant support center manuals, newsletters and information and referral manuals.
12. Demonstrate to the area agency 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 language.
13. Provide programmatic and fiscal reports to the AAA and SUA in a timely manner and provide additional information as may be requested by the AAA and the Legal Services Developer, while maintaining client confidentiality.
14. Work with the Legal Services Developer and AAAs in developing a new statewide reporting system on legal assistance. All providers

will use the new reporting system that will be developed within a year.

15. Coordinate services with the AAA staff and the developer on programs including but not limited to Long Term Care Ombudsman, Senior Medicare Patrol, Caregiver, Nutrition and Medicaid Waiver in developing and utilizing a procedure for case acceptance and referrals.
16. If the LSP is not a Legal Services Corporations (LSC) grantee, it shall develop and utilize a plan for coordination of services with the local LSC. The plan shall be reviewed by the AAA and the Legal Services Developer for input.
17. If the LSP is engaged in a private practice, it shall not use the Title IIIB contract to enhance its private practice. If the case is not one the LSP will handle under the Title IIIB contract, he or she must provide the client with a rotating list of attorneys practicing in the same geographic area. The LSP may include his or her own name on the rotating list of attorneys, but shall make no attempt to influence the client to utilize his or her services.

C. ETHICAL STANDARDS FOR PROVIDERS

1. LSPs must abide by the Code of Professional Responsibility adopted by the Supreme Court of Nebraska to regulate the practice of law.
2. LSPs shall develop and follow a protocol and a program policy for referral of fee generating cases and submit such policy to the AAA and Developer for approval.
3. LSPs shall develop and submit to AAA and the Developer for approval, a program policy on conflicts of interest. Such a policy, at a minimum, shall include provisions for identifying and resolving conflicts for employment and other activity outside the Title IIIB program and shall extend to all persons employed part time or providing services on a volunteer basis. The purpose of the policy shall be to protect clients from potential compromises of claims due to an inability to exercise independent professional judgment on behalf of a client.

LSPs shall work with the AAA and SUA in establishing goals for the future of the legal assistance program in consultation with AAA staff and the Legal Services Developer.

V. DEVELOPMENT AND IMPLEMENTATION OF UNIFORM STATEWIDE REPORTING SYSTEM

The LSPs including the Legal Aid of Nebraska ElderAccessLine® and the AAAs will work with the Developer to develop a statewide reporting system to capture program data on services in priority issues, client demographics, community education presentations and a narrative section on success stories and any challenges encountered. The LSPs including the Legal Aid of Nebraska ElderAccessLine® will use the Uniform Statewide Reporting System once developed. The reports should be submitted by the LSPs to their respective AAA who will then send them to the Developer on a quarterly basis to be determined. Legal Aid of Nebraska will submit the reports to the AAAs and the Legal Services Developer simultaneously on a quarterly basis to be determined.

VI. Legal Services Provider Rate of Pay

A committee made up of members of the Elder Rights Coalition set hourly rates of pay for legal providers as follows:

Attorneys: \$175 per hour
Para Legal: \$90 per hour

These rates went into effect July 1, 2016 and can be used in determining the monetary impact of legal services provided to Nebraskans age 60 and over.

APPENDICES

APPENDIX 1

PARTICIPANTS ON WORK GROUP THAT DEVELOPED THE DRAFT STANDARDS

ELDER RIGHTS COALITION MEETING January 5, 2011

Attendees

Name and Organization

Tami Barrett, Aging Partners
Chuck Bentjen, South Central AAA
Carly Beusch, NE Domestic Violence
Sexual Abuse Coalition
Madhavi Bhadbhade, State Unit on Aging
Connie Cooper, Northeast NE AAA
Dianne Fowler, Midland AAA
Julie Hippen, APS
Penny Hommel, TCSG, Ann Arbor, MI
Julie Horne, ADRC
Rod Horsley, South Central NE AAA
Chris Kelly, UNO Dept. of Gerontology
Cindy Koenig-Warnke, LPD
Richard Mettler, DHHS (Facilitator)
Patty Pierson, SUA
Valerie Soroka, Administration on Aging
Margaret Schaefer, Legal Aid of NE
Randy Stoll, Attorney General's Office
DeAnna Tuttle, Midland AAA
Pat Wilcox, ENOA
Mary Wilson, Buford Law

APPENDIX 2

LISTING OF CURRENT PROGRAMS IN NEBRASKA, BY AAA REGION

Aging Office of Western Nebraska (AOWN - Scottsbluff)

- Contracts with: Legal Aid of Nebraska for ElderAccessLine® through NE4A.
- Reports: ElderAccessLine® monthly and quarterly reports and “group services” in the Nebraska Automated Management Information System (NAMIS).
- Outreach activities: Information on ElderAccessLine® disseminated throughout the panhandle region.

West Central Nebraska Area Agency on Aging (WCNAAA – North Platte)

- Contracts with: Legal Aid of Nebraska for ElderAccessLine® through NE4A.
- Reports: ElderAccessLine® monthly and quarterly reports and “group services” in NAMIS.
- Outreach/dissemination of information: Public Benefits Specialist does annual presentations at 19 Senior Centers on legal topics and services.

South Central Nebraska Area Agency on Aging (SCNAAA – Kearney)

- Contracts with: A private attorney who supervises a paralegal who is employed by SCNAAA. SCNAAA does not provide any funds toward supporting the Elder Access Line but is a member of the NE4A.
- Reports: Legal services numbers are reported under “group services” in NAMIS. SCNAAA also provides a monthly report to their Governing Board.
- Outreach activities: Visits to senior centers on a quarterly basis, and presentations on legally related issues at senior centers, as well as nursing homes, assisted living facilities and service organizations.

Midland Area Agency on Aging (MAAA – Hastings)

- Contracts with Legal Aid of Nebraska for ElderAccessLine® through NE4A.
- Reports: ElderAccessLine® monthly and quarterly reports and “group services” in NAMIS.
- Outreach activities: Legal brochures are handed out along with Senior Center newsletters, MAAA newsletters and MAAA web site. Information on ElderAccessLine® is disseminated

Northeast Nebraska Area Agency on Aging (NENAAA – Norfolk)

- Contracts with Legal Aid of Nebraska. NENAAA has two contracts: one of which is for elderly Native Americans. Legal Aid provides one education program a year to each of the two Native American Senior Centers and also provides legal assistance. The other contract is to provide an annual education program to each of the identified senior Centers (NENAAA provides Legal Aid a list). Legal Aid provides individual legal assistance to seniors.
- Reports: Monthly and quarterly reports from Legal Aid; “group services” in NAMIS; Senior Centers receive any handouts from education program.
- Outreach activities: Each Senior Center in the service area provides outreach and/or publicly advertises the Legal Aid scheduled visit to maximize the number of people to be served during the visit. Also, Legal Aid attorney makes presentations at Senior Center. Each Senior Center is given a one-page flyer about the ElderAccessLine® to be posted at the Center. Legal Assistance is included in Agency presentations and brochures, as well as Senior Center newsletters and announcements.

Blue Rivers Area Agency on Aging (BRAAA – Beatrice)

- Contracts with: Legal Aid of Nebraska for ElderAccessLine® through NE4A.
- Reports: ElderAccessLine® monthly and quarterly reports and “group services” in NAMIS.
- Outreach activities: Posters, business cards and flyers provided by Legal Aid on the ElderAccessLine® are disseminated.

Aging Partners (Lincoln)

- Contracts with a private attorney for legal services. Attorney sees seniors by appointment once a week at the Aging Partners Offices. One-on-one help with questions related to legal matters including representation is provided to seniors through this contract. Referrals from Legal Aid are handled by the attorney as appropriate. Attorney also makes presentations every quarter on legal topics at four rural Lancaster County Senior Centers. Aging Partners also contracts for the ElderAccessLine® through NE4A
- Reports: Activities are reported under "Group Services" in NAMIS. In addition, contracting attorney sends quarterly activity report to Aging Partners and Legal Services Developer including a list of presentations made and topics discussed at Senior Centers.
- Outreach activities: Through Senior Centers, newsletters, web site, etc.

Eastern Nebraska Office on Aging (ENOA – Omaha)

- ENOA contracts for the ElderAccessLine® through NE4A. ENOA also has an agreement with a local attorney for case referrals.
- Reports: "Group Services" reported in NAMIS and EAL reports.
- Outreach activities: Outreach is done by staff with presentations, via agency website and brochures.

APPENDIX 3

EFFICIENCY AREAS FOR LEGAL SERVICES PROVIDERS IN NEBRASKA

Under the Model Approaches grant the State Unit on Aging, Legal Aid of Nebraska's ElderAccessLine®, and the Area Agencies on Aging are required to coordinate the legal services provided to seniors to increase the efficient use of limited resources. Each legal program in the State has areas of strength, and by maximizing each program's strengths the overall efficiency increases.

1) ElderAccessLine® – Legal Aid of Nebraska (800) 527-7249

The ElderAccessLine® provides services through a telephone hotline Statewide. ElderAccessLine® takes inbound calls Monday – Thursday from 9:00 a.m. to noon and 1:00 p.m. to 3:00 pm, and on Fridays from 9-12 a.m. Seniors over the age of 60 can contact the ElderAccessLine® during these phone hours for assistance. Applications can be submitted anytime on-line at www.legalaidofnebraska.com

The ElderAccessLine® assists clients requiring assistance with the following types of legal issues:

Collection – The ElderAccessLine® provides advice for clients with debt problems at any stage. ElderAccessLine® assists with collection abuses, Pay Day loans, and protecting social security. Low income clients can get extended representation to protect exempt income and assets. Collection cases are usually be resolved at the hotline level of service.

Bankruptcy, - Low income clients that have income to protect can often be accepted as bankruptcy clients. Many clients assume they need a bankruptcy when they are already protected under the law, and the ElderAccessLine® assesses the need for a bankruptcy, and refers the case to a Legal Aid office, Volunteer Lawyers Program, or a private attorney as appropriate.

Durable Power of Attorney/Living Will– The ElderAccessLine® can efficiently provide substitute decision making documents for clients that are able to effectively communicate over the telephone.

Benefits – Appeals of benefit denials, such as SNAP (Food Stamps) or Medicaid can generally be handled through the ElderAccessLine®. These cases are sent to the local Legal Aid offices for representation.

Housing – If a client is living in subsidized housing, or is on some other form of public housing, the ElderAccessLine® can assist with problems that may lead to eviction. These cases are sent to the local Legal Aid offices for representation.

2) Title IIIB Legal Service programs provided through the Area Agencies on Aging

The Title IIIB programs generally include presentations to seniors, face-to-face meetings with seniors, and some further assistance as needed. These providers are able to assist clients who have difficulty hearing over the phone, and can better assess if someone is sufficiently competent to sign a will or power-of-attorney document.

SCNAAA Legal Service Program

The program is staffed full-time by Sonya Rasmussen, Legal Assistance Coordinator. SCNAAA contracts with Chuck Bentjen as Supervising Attorney. Sonya visits senior centers on a quarterly basis and provides programs to the seniors on various legal topics. Sonya and Chuck meet face-to-face with clients, and prepare simple wills, powers of attorney, advance directives, as well as other legal documents. Advice and assistance is provided on issues regarding Medicaid, Social Security, landlord/tenant disputes and debt collections, to name a few. In the event that the program is unable to assist a client, Sonya will refer the client to the ElderAccessLine®, Legal Aid, the Volunteer Lawyer Program, or a member of the private bar. Every effort is made to help the client secure assistance.

NENAAA Legal Service Program

NENAAA contracts with Legal Aid of Nebraska's Norfolk office to provide Title IIIB services in their area. Legal services are provided annually at each senior center, and include a presentation on legal topics, and consultations with individuals. Eligible clients can receive extended representation on legal cases.

Aging Partners Legal Services Program

Mary Wilson is the Title IIIB provider of Legal Services for Aging Partners. Legal Services are provided through face-to-face meetings at four rural senior centers. Ms. Wilson provides advice, brief service, and extended representation on some cases. She visits people who are homebound or are in nursing homes, and helps establish and maintain guardianships.

3) Walk-in centers

Self Help Centers, Omaha, Lincoln, Grand Island

There are Self-Help Centers in Lincoln, Omaha, and the Grand Island area operated by volunteer lawyers who may be able to be of assistance. Centers are coordinated by the Nebraska State Bar Association Director of Legal Services. Legal information, assistance with forms, and brief legal advice is provided through the centers on a first-come, first-serve basis:

Lincoln (Lancaster County) Open Monday 10:00 a.m. – 2:00 p.m., Thursday 9:00 a.m. – 1:00 p.m., Friday 9:00 a.m. to -12:00 p.m.

The Self-Help Desk is located off the Jury Lounge on the third floor at the Lancaster County Courthouse at 575 South 10th Street in Lincoln.

Omaha (Douglas County) Open Mondays, Wednesdays and Fridays from 10:00 a.m. to 2:00 p.m.

The Self-Help Desk is located in the Douglas County Law Library. Follow the connector-hallway between the Douglas County Courthouse and the 1st Floor Hall of Justice, 17th and Farnam in Omaha.

Tri-City Center (Hastings, Grand Island, Kearney) Open Fridays from 10:00 a.m. to 2:00 p.m.

The Self-Help Desk is located on the lower level of the Hall County Courthouse (across from Courtroom #3) at 111 West First Street in Grand Island.

Access 2 Justice Center - 1904 Farnam St. Omaha, Nebraska

Walk in, Monday – Friday 1:00 pm – 4:00 p.m.

Legal Aid of Nebraska provides a self-help center for eligible clients. Clients are served on a first-come, first-serve basis with legal forms, advice,

computers, and clinics. Clinics are offered to assist clients with set asides of criminal convictions, expungements from the central abuse registry, termination or modification of child support orders, and uncontested custody matters.

4) Law School Clinics

Law School Clinics are available to provide legal representation to low income people while providing litigation experience to law students. The cases are handled by students under the supervision of a licensed attorney.

University of Nebraska, Lincoln, Law School Legal Clinic –
402-472-3271

Clinic students represent low-income clients in a wide variety of civil and administrative cases

Creighton University School of Law Legal Clinic - (402) 280-3068
between 9:00 a.m. and 4:00 p.m. Monday through Thursday

The Civil Law Clinic offers free legal assistance on civil matters to low-income residents of Douglas County, Nebraska. The clinic operates as a small law firm, staffed by law students under the supervision of the Clinic Director, Professor Catherine Mahern.

5) Other programs

Nebraska Department of Insurance, Senior Health Insurance Information Program (SHIIP) -1 800.234.7119

The **Nebraska SHIIP** provides free, unbiased information and counseling to older Nebraskans and persons with disabilities regarding Medicare, Medicaid, and other insurance needs.

Nebraska **Senior Medicare Patrol** (SMP) Program provides outreach, education and individual assistance to older persons on how to prevent health care fraud and consumer scams 1-800-234-7119.

Volunteer Lawyer Project

The Volunteer Lawyer Program matches eligible clients with volunteer private attorneys throughout the State of Nebraska. The program takes only extended representation cases and referrals are made through Legal Aid of Nebraska.

ACKNOWLEDGMENTS

Developing Nebraska's Statewide Legal Standards was a team effort undertaken by a number of individuals.

Many thanks to the members of the Working Meeting Group that met in January 2011 to kick-off this project by providing input on target groups and priority issues for the standards development.

Special thanks to a the Legal Standards Work Group members: Margaret Schaefer, Mary Wilson, Chuck Bentjen, Rod Horsley, Julie Masters, Robert Sanford, Patty Pierson, Penny Hommel, Valerie Saroka and Madhavi Bhadbhade.

Special thanks to Penny Hommel for guiding the work group throughout the development of the project. Her expertise and time commitment in reviewing and editing the document are greatly appreciated.

March 2012