

Older Americans Act Legal Assistance Aging and ADRC Operations Manual



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I. Introduction

A. Definitions

- **Area agency on aging (AAA):** “Area agency on aging” means the agency designated under [42 USC 3025](#) (a) (2) (A).
- **Attorney:** A lawyer licensed by the Wisconsin State Bar to practice law in the state of Wisconsin.
- **Board on Aging and Long Term Care (BOALTC):** An independent board appointed by the Wisconsin governor that operates the long-term care ombudsman, volunteer ombudsman, and Medigap Helpline services.
- **Bureau of Aging and Disability Resources (BADR):** A bureau of the Wisconsin Department of Health Services that includes the State Unit on Aging.
- **Conflict of interest (COI):** Competing interests which affect or may affect the ability of an advocate to act appropriately on behalf of their client; see also [45 CFR 1321.3 “Conflicts of interest.”](#)
- **Department of Health Services (DHS):** Wisconsin Department of Health Services, a branch of the Wisconsin state government.
- **Elder benefit specialist (EBS):** A person performing elder benefit counseling as described in the [Elder Benefit Specialist Program Operations Manual chapter \(P-03062-05b\) \(PDF\)](#).
- **Greatest economic need:** Need resulting from having income at or below the federal poverty level, as well as other factors defined in aging plans, per [CFR 1321.3 “Greatest economic need.”](#)
- **Greatest social need:** Need resulting from noneconomic factors, including physical and mental disabilities; language barriers; cultural, social, or geographic isolation; and other factors defined in aging plans, per [45 CFR 1321.3 “Greatest social need.”](#)

- **Legal assistance:** Legal advice and/or representation provided by an attorney to older individuals with economic or social needs, including counseling or representation by a non-lawyer as permitted by law, per [42 U.S.C. § 3002 \(33\)](#) and [45 CFR 1321.93\(a\)](#).
- **Legal Assistance Developer:** The Wisconsin Bureau of Aging and Disability Resources staff member who fulfills the requirements of [42 U.S.C. § 3058j](#).
- **Legal assistance provider:** The organization, selected by the area agency on aging, providing Older Americans Act legal assistance, as described in [45 CFR 1321.93](#).
- **Non-lawyer:** A person who is not a licensed attorney but who is specifically permitted by federal or state law to provide limited counseling or representation (for example, representation in Social Security administrative hearings and certain other public benefit hearings); may include a law student or paralegal under the direct supervision of a lawyer.
- **Older Americans Act (OAA):** First enacted in 1965, the OAA ([P.L. 116-131](#); [P.L. 118-47](#); [P.L. 89-73](#)) is the primary federal statute for the delivery of social and nutrition services for older people.

B. Program purpose

The OAA legal assistance program promotes the independence, autonomy, and well-being of older people with the greatest economic and social need through legal advocacy interventions.

C. Legal authority

Legal authority for the legal assistance program derives from the Older Americans Act.

D. Program history

In 1965, President Johnson signed the Older Americans Act (OAA) into law.

A 1975 amendment to the OAA included legal assistance as a priority service under Title III-B. With the help of the Center for Public Representation, the elder benefit specialist (EBS) program began in 1977 as a pilot in seven southern Wisconsin counties. In 1983, it was one of two state models from which counties could choose for providing legal assistance. By 1987, all 72 counties had adopted the EBS program model.

In 1985, elder benefit specialists formed their own organization, the Wisconsin Association of Benefit Specialists.

The 1987–89 state budget included statutory language mandating the program statewide and allocating general purpose revenue (GPR) state funds to support the program beginning in 1988. The 1989–91 and 1991–93 state budgets included modest increases in funding. As part of an elder-rights initiative, the 1997–99 state budget included a more substantial increase.

In 1989, the Bureau of Aging and Long Term Care Resources (which eventually became BADR) secured grant funds for a study of the civil legal needs of economically vulnerable older Wisconsin residents and the effectiveness of the EBS program in meeting those needs. The results were published in 1991 (the "Spangenberg Report"). The report found that the EBS program was effective in meeting benefit-related legal needs but was seriously underfunded; the report made several recommendations for improving the program. One was to develop EBS program policies, which were issued in 1992. The policies were revised in 2004 and 2008.

In 2024, the federal Administration for Community Living (ACL) determined that Wisconsin's model was out of compliance with OAA statutory rules. ACL issued a notice of non-compliance to BADR stating that:

- Individuals must have direct access to OAA attorneys (rather than going through EBSs).
- The EBS program did not provide representation in all OAA priority areas.
- The program did not provide enough legal representation.
- The program structure did not meet the OAA definition of legal assistance.

To come into compliance, DHS divided the EBS program and OAA legal assistance.

Beginning in 2026, AAAs procured OAA legal assistance separately from the provision of Wis. Stat. 46.81 "training, supervision, and legal back-up" for EBSs. This removed OAA funding from the EBS program, making it a state

program rather than federal program. BADR sought to increase legal representation and preserve the EBS program with this approach.

II. Eligibility for services

A. Age

Older Americans Act legal assistance is available to adults age 60 or older, per [42 U.S.C. § 3002 \(40\)](#).

B. Greatest social and economic need

1. Older Americans Act legal assistance is available to adults with the greatest economic or social need.
2. **Legal assistance providers cannot use a means test to determine eligibility**, per [45 CFR 1321.93\(f\)\(2\)\(xi\)\(A\)](#) and [45 CFR 1321.93\(f\)\(2\)\(xi\)\(B\)](#). In other words, legal assistance providers may not condition the provision of Title III-B-funded legal assistance based on a person's level of income or assets. 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.

C. Priority areas

Per [45 CFR 1321.93\(d\)\(2\)](#), the legal assistance program must give priority to cases related to:

- Abuse and neglect.
- Age discrimination.
- Defense against guardianship.
- Healthcare.
- Income.

- Housing.
- Long-term care.
- Nutrition.
- Protective services.
- Utilities.

III. Agency roles and responsibilities

A. Administration for Community Living

At the federal level, the Administration for Community Living oversees OAA funding to states, including funding for legal assistance.

B. State Unit on Aging

At the state level, the State Unit on Aging (the Wisconsin Office on Aging) in BADR provides oversight to AAAs.

1. Legal assistance developer responsibilities

a. Role

- (1) The legal assistance developer is staffed in BADR.
- (2) The authority, definition, and mandate of the state legal assistance developer derives from the Older Americans Act, specifically [42 U.S.C. § 3058j](#):

“A State agency shall provide the services of 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 assistance provided to older individuals.”

b. Program operation

(1) The legal assistance developer in BADR has overall responsibility to provide leadership so that program staff and partners are most effectively implementing coordinated and vigorous advocacy efforts to protect and enhance the rights, benefits, and entitlements of older people throughout Wisconsin. Duties and responsibilities include:

- Providing state leadership in ongoing development of a statewide system to secure and maintain rights, benefits, and entitlements of older people.
- Coordinating the provision of legal assistance throughout the state.
- Providing periodic review, updates, technical assistance, and training on these program policies and procedures.
- Ensuring implementation of any federal or state reporting requirements.
- Coordinating services with the state ombudsman program as well as other Older Americans Act and state aging and disability programs.

- Consulting with program staff and partners on issues relevant to the operation of the program.

(2) The legal assistance developer is responsible for the overall operation of the OAA legal assistance program. Duties include:

- Responding to concerns regarding the operation of the program.
- Obtaining, compiling, and publishing program-wide data.
- Overseeing AAAs' awards to legal assistance providers.
- Developing the OAA state plan goals for legal assistance, per [§ 3027](#).

c. Confidentiality

The legal assistance developer must maintain the confidentiality of customers of the program to the same extent as the confidentiality maintained by legal assistance providers.

2. Conflicts of interest

The legal assistance developer, per [45 CFR 1324.303\(d\)](#), must not have personal or professional roles that would impact the effectiveness or credibility of their work.

C. AAA Responsibilities

1. Contract for legal assistance

- Per [§ 1321.71\(e\)](#), AAAs must award Older Americans Act funds to agencies and organizations to provide direct services.
- AAAs must select the agency best qualified to provide OAA legal assistance, per [45 CFR 1321.93\(d\)](#). Considerations in selecting a legal assistance provider include the entity's capacity to:

- (1) Protect the autonomy, dignity, and independence of vulnerable older people.
- (2) Foster cost-effective, high-quality legal services, having maximum impact on those in greatest social and economic need and their most critical legal needs.
- (3) Focus outreach and service on those in the greatest social and economic need.
- (4) Assist vulnerable older adults in preventing legal problems through education and outreach.
- (5) Be accessible throughout their service area, particularly to the target populations specified in the OAA.

c. Each AAA must ensure Older Americans Act program assistance is available in the entirety of its service area.

2. Program monitoring

AAAs are responsible for monitoring the legal assistance provider grantee to ensure compliance with regulations and quality assurance, including efforts to accomplish the program mission.

3. Outreach

- a. Area plans must include specific objectives for providing outreach and services to eligible adults with the greatest social or economic need.
- b. Effective outreach is best achieved through joint planning by the AAA and legal assistance provider and coordinating efforts to conduct outreach and education.

D. Legal assistance provider responsibilities

1. Staffing

Legal assistance providers must meet the requirements outlined in [45 CFR 1321.93\(f\)](#).

a. Expertise

Legal assistance provider agencies must:

- (1) Ensure that all staff have experience and training on OAA priority areas, per [45 CFR 1321.93\(f\)\(2\)\(iv\)](#).
- (2) Develop mechanisms for keeping staff's knowledge current on priority areas.
- (3) Have ready access to the following for all appropriate staff:
 - Relevant federal laws and regulations
 - Local ordinances
 - Relevant state laws and regulations
 - Manuals for relevant government programs
 - Relevant support-center manuals
 - Newsletters
 - Information and referral manuals
 - A law library

b. Staffing

Legal assistance provider agencies must:

- (1) Have any lawyer staff licensed to practice law in the State of Wisconsin and carry adequate malpractice insurance.
- (2) Maintain the capacity to provide effective administrative and judicial representation, per [45 CFR 1321.93\(f\)\(2\)\(ii\)](#).

2. Outreach

Legal assistance providers must:

- a. Work with the AAA, the counties, and Tribal nations in their service area, and the state legal assistance developer to assess and develop local program plans for reaching the target populations and for addressing OAA priority areas.
- b. Conduct regional public education programs and/or develop resources for use locally on topics of particular concern to older adults in the service area.

3. Provision of legal assistance

a. Accessibility

Prospective clients must be able to contact legal assistance provider offices directly.

b. Referrals and case acceptance

Legal assistance providers must:

- (1) Evaluate a case after receiving a referral for representation. The legal assistance provider may consult with team members before deciding whether to accept a case.
- (2) 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.
 - (a) For purposes of this requirement, this means that the legal assistance provider in Milwaukee County must be able to provide assistance in Spanish.
 - (b) This requirement may be met through the availability of interpreters or translation services.

c. Legal assistance

Legal assistance providers must:

- (1) Provide a full range of legal advocacy services, including litigation, administrative reform, legislative advocacy and other advocacy within the limits of applicable federal and state law and regulations.
- (2) Abide by [Wisconsin Supreme Court Rules of Professional Conduct for Attorneys](#), adopted by the Wisconsin State Supreme Court to regulate the practice of law (see Chapter 20 of the Wisconsin Supreme Court Rules).

d. Pro bono services

The legal assistance provider has primary responsibility for the development and expansion of pro bono legal resources and must work cooperatively with the AAA in this effort.

4. Complaints

Legal assistance providers must provide clients with a mechanism for filing complaints or grievances about the operation of the program or about denial of service.

5. Conflicts of interest

Legal assistance providers must:

- a. Follow the conflict of interest rules outlined in the [Wisconsin Supreme Court Rules of Professional Conduct for Attorneys](#).
- b. Have a written conflict-of-interest policy, which must at least include provisions for identifying and addressing conflicts for employment and other activity outside the program that will extend to all people employed full-time, part-time, or on a volunteer basis. The purpose of the policy will be to protect clients from potential compromises of claims due to an inability to exercise independent professional judgment on behalf of a client as required by the [Wisconsin Supreme Court Rules of Professional Conduct for Attorneys](#).

- c. Not represent a client if doing so entails a conflict of interest.

IV. Collaborating with other programs

A. Legal Services Corporation-funded program

Legal assistance providers must develop written protocols for coordination of services with the local Legal Services Corporation (LSC) program, if the provider is not itself an LSC-funded program.

B. Elder benefit specialist program

Legal assistance providers must coordinate with the Wisconsin elder benefit specialist program. This coordination must include developing referral processes.

C. Board on Aging and Long Term Care

1. Background

The Board on Aging and Long Term Care (BOALTC) operates the long-term-care ombudsman program under contract with DHS to satisfy requirements of the OAA. The goal of the ombudsman program is to resolve complaints filed by or on behalf of the residents of long-term-care facilities or participants of home and community-based long-term care Medicaid waiver programs. The ombudsman program also handles complaints about the administration of long-term-care services by government agencies at the state and local levels. The ombudsman program investigates complaints in an impartial and unbiased manner and negotiates resolutions. The ombudsman program has no enforcement powers; where the enforcement of a state or federal law or rule is necessary, the ombudsman will work on behalf of the consumer to involve the proper enforcement authority. Legal counsel, available through BOALTC or through the OAA legal assistance program, can pursue unresolved cases.

2. Responsibilities

OAA legal assistance providers must develop coordinated referral processes with the BOALTC ombudsman.

3. Memorandums of understanding

The BOALTC ombudsman program has memorandums of understanding (MOUs) with:

- a. The legal assistance developer in BADR to facilitate the coordination of services and exchange of information regarding the availability of legal assistance and referral for legal assistance for mutual consumers of BADR and BOALTC services. This MOU fulfills the requirement of [45 CFR 1324.13\(h\)\(2\)\(ix\)](#).
- b. Legal assistance providers to address referral processes for mutual customers of OAA legal assistance and BOALTC ombudsman services. These MOUs fulfil the requirement of [45 CFR 1324.13\(h\)\(1\)\(i\)](#).

V. Operational policies and procedures

A. Statutory references

1. [45 CFR 1321.93 Legal Assistance](#)
2. [Supreme Court Rules Chapter 20, Rules of Professional Conduct for Attorneys](#)

B. Allowable funding sources

1. Older Americans Act Title III-B funds legal assistance. AAAs must ensure that 5% of Title III-B funds are designated for legal assistance [[45 CFR 1321.93\(b\)\(2\)](#)].
2. Voluntary contributions must be allowed and may be solicited, provided the method of solicitation is non-coercive and maintains privacy. Additionally, the solicitation method may not discourage future utilization of the service by

the client or other potentially eligible individuals (for example, providing the opportunity to contribute to the program through one-on-one solicitation only after services have been completed).

C. Reporting requirements

AAAs and legal assistance providers must comply with federal reporting requirements. Legal assistance providers must submit required data for the federal fiscal year to the state for the Older Americans Act Performance System (OAAPS) report. The data report template is available in the [Elder Benefit Specialist SharePoint site \(login required\)](#) and upon request from the legal assistance developer in BADR. See the [Administration for Community Living OAAPS website](#) for reporting resources.

D. Confidentiality

1. General policy

Legal assistance providers must maintain confidentiality of all records and information, including identities of clients, in accordance with the [Wisconsin Supreme Court Rules of Professional Conduct for Attorneys](#), the Older Americans Act, and applicable federal and state case law.

a. Statutory authority

- (1) The legal assistance program's confidentiality policy derives from the OAA and [Wisconsin Supreme Court Rules of Professional Conduct for Attorneys](#).
- (2) Policy
 - (a) Per [45 CFR 1321.93\(b\)\(1\)\(vi\)](#):

“Attorneys and personnel under the supervision of attorneys providing legal assistance shall adhere to the applicable Rules of Professional Conduct including the obligation to preserve the attorney-client privilege.”

(b) Per [45 CFR 1321.75\(c\)](#):

“A State agency, area agency on aging or other contracting or granting or auditing agency may not require a provider of long-term care ombudsman services under this part to reveal any information that is protected by disclosure provisions in 45 CFR part 1324, subpart A. State agencies must comply with confidentiality and disclosure of information provisions as directed in 45 CFR part 1324, as appropriate.”

(c) Per [Supreme Court Rules 20:1.6](#):

“A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation.”

(3) Justification

The standards in the OAA are based on the belief that older people may be hesitant to seek legal assistance if others would have access to their identifying information. This is clearly stated in the legislative history to the OAA:

"The Committee understands that some legal assistance providers may be reluctant to contract with area agencies without this assurance. Many older individuals might be hesitant to ask for the legal advice and counsel they need if they thought others would have access to their identifying information. This assurance of confidentiality makes it easier for older persons to seek the assistance they need to resolve their legal problems, and makes it easier for legal assistance providers to serve them in good faith." (REP. No. 97, 100th Cong., 1st Sess. 122 (1987))

b. Exceptions

1. Disclosure necessary to prevent harm or criminal activity

Per [Supreme Court Rules 20:1.6](#):

“(b) A lawyer shall reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to prevent the client from committing a criminal or fraudulent act that the lawyer reasonably believes is likely to result in death or substantial bodily harm or in substantial injury to the financial interest or property of another.

(c) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably likely death or substantial bodily harm;

(2) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services.”

2. Disclosure necessary to provide service

It is permissible to disclose client information to a person, such as agency IT or support staff, for the purpose of providing client services. Any agency employee or volunteer whose services are used to support the representation of clients is subject to the same confidentiality standard as the legal assistance provider.

3. Disclosures with client permission

Whenever a client authorizes the legal assistance provider to communicate with someone about their case, the attorney may do so without violating confidentiality rules.

4. Elder abuse reporting

Legal assistance providers should follow the elder abuse reporting requirements described in the Wisconsin Supreme Court Rules.

E. Prohibited activities

1. Dues

Legal assistance providers may not use OAA funds for dues exceeding a reasonable amount, per [45 CFR 1321.93\(f\)\(4\)\(v\)](#).

2. Fee-generating cases

- a. Title III-B legal assistance funds cannot be used to provide legal assistance in fee-generating cases, per [45 CFR 1321.93\(f\)\(3\)\(i\)](#).
 - (1) Legal assistance providers must not collect a fee from a customer; someone paying on behalf of the customer; or a local, state, or federal agency or governing body.
 - (2) Certain exceptions apply, such as fees awarded under the Federal Equal Access to Justice Act.
- b. Legal assistance providers must have a protocol for referral of fee-generating cases.

3. Lobbying

- a. The OAA prohibits legal assistance providers from lobbying, per [45 CFR 1321.93\(f\)\(4\)\(ii\)](#).
- b. With respect to lobbying and advocacy, program attorneys at LSC-funded agencies must follow the more restrictive LSC regulations.
- c. Legal assistance providers may not attempt to influence legislative or administrative action by oral or written communication with any elected official, agency official, or legislative employee.

- d. The OAA includes advocacy as part of the core mission of the aging network. Legal assistance providers can provide informed advocacy based upon their detailed knowledge of public benefits and the individual situations they see. Legal assistance providers are perfectly situated to advocate for improved public policies affecting older people. Such advocacy allows individual problems to be translated into systemic reform.

4. Political activity

Per [45 CFR 1321.93\(f\)\(4\)\(i\)](#), legal assistance program staff may not:

- a. Utilize Title III-B funds for political activity.
- b. Identify the program with any partisan activity or candidate.
- c. Engage in political activity while engaging in OAA legal assistance activities.