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**DEDICATION TO
BURT FRETZ**

This issue of *Best Practice Notes (BPN)* is dedicated to Burton Fretz, former Executive Director of the National Senior Citizens Law Center and one of the true heroes among advocates for the elderly. His death in early April was a devastating loss to the elder rights community. Burt was a colleague and a friend, but he was so much more than that. Burt's insights into law and advocacy, his commitment to aging and the rights of all persons, his dry humor, but, more than anything else, his enormous ability that was always accompanied by an even greater humility – all these things made him a natural leader whom all who knew him admired and emulated. In a field with all too few heroes, we greatly mourn the loss of one of our finest and hope that each of us, in our own way, can carry forward the ideals and values that Burt demonstrated on a daily basis. One of the things that Burt fought very hard to protect and expand is legal assistance/elder rights in the Older Americans Act. It is fitting that this issue of *BPN*, which is devoted to the reaffirmation of legal assistance in the 2000 Amendments to the Act, be dedicated to Burt.

**2000 AMENDMENTS
REAFFIRM LEGAL
ASSISTANCE & ELDER
RIGHTS AS ESSENTIAL
TO OAA MISSION**

Late last Fall, following nearly six years of effort, the US Senate and House of Representatives -- both with nearly unanimous bipartisan support -- approved the 2000 Amendments (H.R. 782) to the Older Americans Act of 1965. On November 13, 2000, President Clinton signed P.L. 106-501 into law, re-authorizing the Act through 2005. While the reauthorization contains many important provisions, including a new National Family Caregiver Support Program, The Center for Social Gerontology (TCSG) hailed the reauthorization particularly for its reaffirmation of elder rights and legal

assistance as essential and integral parts of the Act. Congress retained in the 2000 Amendments, a number of critical provisions to assist the nation's most vulnerable elders in securing essential rights, protections and opportunities. These include: retaining legal assistance under Title IIIB as one of three priority (required) services; retaining in Title IV a national legal assistance support system; and retaining major portions of the centerpiece of the 1992 Amendments -- Title VII, the Elder Rights Title, including Chapter 4 on State Legal Assistance Development. Because TCSG has received a number of questions about specific provisions of the 2000 Amendments and their implications for legal services and legal assistance development, the main article in this issue of *Best Practice Notes* is devoted to providing answers to some of the most frequently asked questions.

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**LEGAL ASSISTANCE
AND THE 2000
AMENDMENTS TO THE
OLDER AMERICANS
ACT: SOME
QUESTIONS
AND ANSWERS**

By:
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As indicated above, the 2000 Amendments to the Older Americans Act (OAA) retained many significant provisions which reaffirm the importance of elder rights and legal assistance, and the Amendments also made changes which have important implications for the Administration on Aging (AoA), state and area agencies, legal services developers and legal assistance providers. Set out below, in question and answer format, are the current provisions of the Act that most directly affect legal assistance. Readers with questions not answered by this article are encouraged to contact the author at: kcampeau@tcs.org. We will attempt to address any questions we receive on our web site and in future articles.

Question 1

Is legal assistance still a priority service under the 2000 Amendments to the OAA?

The 2000 Amendments retained legal assistance as one of the three categories of priority services² and thereby reaffirmed the importance of legal assistance under the OAA. The retention of legal assistance as a priority service is significant, in part because of the importance placed on the priority services under the OAA. For instance, the area agencies on aging, under Section 306(a)(2), are required to consider the priority services when developing an area plan. The area plan must assure that an "adequate proportion" of Title III-B funds allotted to a given area will be expended for the delivery of each of the three categories of priority services. Also, under Section 307(a)(2)(C), the State plan must provide that the State agency will specify that a "minimum proportion" of Title III-B funds received by each area agency will be expended to provide each of the three categories of priority services. Furthermore, by preserving legal assistance as a priority service under Title III-B "Supportive Services," the 2000 Amendments reaffirmed the importance of legal assistance and assured that it would be funded for years to come.

Question 2

What is "legal assistance" and what types of delivery systems fall within its definition?

The definition of legal assistance is found in Title I, and while it was moved from Section 102(33) to 102(31), the substantive definition was not altered by the 2000 Amendments. The term “legal assistance” still

- A) *means 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 nonlawyer where permitted by law.*³

Several provisions within the definition of “legal assistance” merit closer examination. First, the 2000 Amendments kept “*legal advice and representation provided by an attorney*” at the beginning of the definition as an independent phrase. This placement indicates that advice and representation *by an attorney* is still a necessary component of any legal assistance program. Second, legal assistance is still the only service definition in the OAA that includes a targeting requirement. Subpart A emphasizes targeting by requiring attorneys to provide legal advice and representation to “*older individuals with economic or social needs.*” Third, in Subpart B, the word “direct” was retained to describe the supervision of paralegals and law students by an attorney. It is our contention that while the definition of legal assistance may include services by paralegals, law students, and even nonlawyers “where permitted by law” (e.g. under Titles II (OASDI), XVI (SSI), XVIII (Medicare), and XIX (Medicaid) of the Social Security Act), a delivery method that utilizes nonlawyers alone is not sufficient. The definition stresses at the outset that advice and representation by an attorney is an essential component of any legal assistance program.

Question 3

Did the 2000 Amendments make any changes to how much must be spent by the state and area agencies on providing legal assistance?

The 2000 Amendments made no substantive changes to how much must be spent by the area agencies on providing legal assistance. The area agencies on aging still must develop an area plan that assures an “adequate proportion” of Title III-B funds will be expended for delivery of each of the three categories of priority services: access, in-home, and legal assistance.⁴ However, the 2000 Amendments made minor changes in both wording and placement of the State plan “minimum percentage” requirement. First, the 2000 Amendments deviated slightly from the 1992 Amendments wording that States specify a “minimum percentage” of Title III-B funds, and now the requirement is a

“minimum proportion.” Second, the Amendments moved the provision to the beginning of the State plan section, from Section 307(a)(22) to Section 307(a)(2)(C). The State plan now must provide that the State agency will

*specify a minimum proportion of the funds received by each area agency on aging in the State to carry out part B that will be expended (in the absence of waiver under sections 306(b) or 316) by such area agency on aging to provide each of the categories of [priority services].*⁵

We believe there is no real distinction in requiring a State agency to specify a minimum percentage, as opposed to a minimum proportion (of Title III-B funds to be expended on priority services). The change in wording actually pales in importance to the fact that the State agency must still specify a minimum - that is a floor, and not a ceiling - for funding legal assistance. In fact, the wording change to “minimum proportion” effectively links the state provision even more closely with the area agency’s “adequate proportion” requirement. Both are now “proportions” that must be specified by the State and then expended by the area agencies on priority services, like legal assistance. The State agency, in setting the “minimum proportion” under Section 307(a)(2), actually defines what is adequate for the area agencies (when they assure they will expend an “adequate proportion” under Section 306(a)(2)). Furthermore, while the 2000 Amendments moved the provision from Section 307(a)(18)(D) to 307(a)(11)(D), the Amendments retained the requirement that any Title III-B legal assistance furnished under the State plan be *in addition* to any legal assistance for older persons furnished with funds from other sources (e.g. under Legal Services Corporation-funded programs), and reasonable efforts must still be made to maintain existing levels of legal assistance for older people.⁶

Question 4

Did the 2000 Amendments change any of the requirements for state or area agencies requesting a waiver for funding legal assistance?

The 2000 Amendments retained but condensed the waiver provisions for area agencies regarding the funding of legal assistance. Area agencies still may request a waiver (from the state) of the requirement that an “adequate proportion” of Title III-B funds be expended on each of the three categories of priority services. However, the 2000 Amendments condensed the waiver provision in Section 306(b), so that an area agency requesting a waiver for any of the three categories of priority services now must: 1) demonstrate to the State agency that the services being provided for such category are sufficient to meet the need for such services in the area, and 2) have conducted a timely public hearing upon request.⁷ The 2000 Amendments removed Section 306(b)(2) completely, and with it, the notice and hearing requirements involved in granting a waiver. This means that an area agency requesting a waiver from the state no longer must notify the interested parties or conduct a

public hearing before making its request. A State agency also no longer must publish its intention to grant a waiver 30 days prior to the decision's effective date, nor must a state provide the Assistant Secretary with a report containing details of the demonstration made by the area agency to obtain the waiver. Instead, the 2000 Amendments shifted the burden to the interested parties to find out about an area agency's intention to seek a waiver before the agency requests it, and then request a public hearing with an opportunity to testify.

In addition to the waiver provisions regarding area agencies, the 2000 Amendments added a new waiver provision to Title III for State agencies. The provision allows the Assistant Secretary to provide a waiver to a state (upon receiving an application and sufficient documentation from a State agency) to waive select provisions of Sections 305 (Organization), 306 (Area Plans), and 307 (State Plans) if

- (1) approval of the State legislature has been obtained or is not required with respect to the proposal for which the waiver is sought;*
- (2) the State agency has collaborated with the area agencies on aging in the State and other organizations that would be affected with respect to the proposal for which waiver is sought;*
- (3) the proposal has been made available for public review and comment, including the opportunity for a public hearing upon request, within the State (and a summary of all the comments received has been included in the application); and*
- (4) the State agency has given adequate consideration to the probable positive and negative consequences of approval of the waiver application, and the probable benefits for older individuals can reasonably be expected to outweigh any negative consequences, or particular circumstances in the State otherwise justify the waiver.⁸*

While it may appear at first glance that this new state waiver provision could render parts of the state and area plan requirements under the OAA ineffective, keep in mind that the decision to grant a waiver is not automatic. First, the state's waiver request requires an application and supporting documentation sufficient to establish 1-4 above. Then, only the provisions of Sections 305, 306, and 307 requiring statewide uniformity of programs may be waived, and only "... to the extent necessary to permit demonstrations, in limited areas of a State, of innovative approaches to assist older individuals."⁹ Similarly, the Assistant Secretary may only grant a waiver for state or area plan requirements of Sections 306(a) and 307(a) if "... granting the waiver will promote innovations or improve service delivery and will not diminish services already provided[.]"¹⁰ Once the waiver is granted, it is limited in scope. While the duration of the waiver is left to the discretion of the Assistant Secretary, it cannot exceed the duration of the State plan.¹¹ Lastly, after a waiver is granted, the State agency must submit a report to the

Assistant Secretary evaluating the impact of the waiver on the operation and effectiveness of its programs and services.¹²

Question 5

What if a state has no area agencies on aging? Does the State agency still have to set a “minimum proportion” of Title III-B funds for delivery of the priority services, including legal assistance?

If a State agency is performing the duties and functions of both a state and area agency, then, as State agency, it must set a “minimum proportion” of Title III-B funds for delivery of each of the three categories of priority services. In the 1970’s, when state and area agencies were initially created under the OAA, states were divided into distinct planning and service areas. One area agency on aging was designated for each planning and service area within the state.¹³ Some states with small populations and/or small geographic areas, designated their entire state as a single planning and service area. Section 305(b)(5)(A) allows a state to continue as the single, statewide planning and service area if it made the designation and received approval from the Assistant Secretary on or before October 1, 1980. A state that is the planning and service area for the entire state then must perform the functions of both the State agency and area agency on aging for the entire state.

A number of states are currently taking on the dual role of State agency and area agency for their entire state.¹⁴ Under Title III, an area agency on aging must “... *have the ability to develop an area plan and to carry out, directly or through contractual arrangements, a program in accordance with the plan within the planning and service area.*”¹⁵ Therefore, a State agency acting as the sole area agency on aging for an entire state should develop and carry out both an area plan and a State plan. The area plan would assure that an “adequate proportion” of Title III-B funds will be expended for the delivery of legal assistance, while the State plan would provide that the State agency will specify a “minimum proportion” of the funds that the area agency must expend to provide legal assistance. The State plan would be submitted to the Assistant Secretary for approval,¹⁶ and the area plan would be submitted to the State agency.¹⁷ Admittedly, it is somewhat redundant for the State agency to develop an area plan and a State plan, and set both an “adequate proportion” and a “minimum proportion,” but there is no real alternative. If the State agency sets no “minimum proportion” (because it has no area agencies to set one for) then priority services, like legal assistance, could go unfunded. On the other hand, it could make perfect sense for the State office on aging to function as the area agency on aging for a given state because the functions of the two agencies are intertwined, and many of their obligations are reciprocal. The challenge for a state with such a dual role is that it maintain enough “separateness of function” such that its role as an area agency does not get swallowed up in its role as a State agency.

Question 6

Did the 2000 Amendments make any changes to the role of the Legal Assistance Developer?

Under Title III of the 2000 Amendments, each state is still required to “... assign personnel (one of which is to be known as a legal assistance developer) to provide State leadership in developing legal assistance programs for older individuals throughout the State.”¹⁸ This language was not altered by the 2000 Amendments, and it seems to reaffirm that more than one person is needed at the state level to perform the duties of the Legal Assistance Developer. The 2000 Amendments also made changes to Chapter 4 of Title VII, “State Legal Assistance Development,” where Section 731(a) was removed entirely and Section 731(b) was substantially reduced. It is our belief that what remains in Section 731 is the core of the Legal Assistance Developer’s work. Under Title VII, a state must still provide 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.*¹⁹

The above list is evidence of the wide-ranging responsibilities that must be undertaken by the Legal Assistance Developer. The developer is responsible for broadly defined activities, such as providing state leadership in securing the legal rights of older persons, as well as coordinating the provision of legal assistance to older persons within the state. The developer must also provide technical assistance to area agencies, legal providers, and others to coordinate the provision of legal assistance to older people and to make sure legal assistance is targeted to those older persons in the greatest social and economic need. The developer also has more narrowly defined responsibilities, such as focusing special attention on substantive areas of the law like promoting financial management services to older persons at risk of conservatorship, and maintaining the rights of older persons at risk of guardianship. Under the 2000 Amendments, the Legal Assistance Developer remains the one person in the state who must conceptualize a statewide vision

of the delivery of legal assistance to the most vulnerable elderly in the state and then implement it.

Question 7

Did the 2000 Amendments make changes to any of the “other obligations” that State agencies have with regard to legal assistance?

The important “other obligations” for State agencies were retained by the 2000 Amendments. The core Title III requirement that the State agency serve as an “effective and visible advocate” for older individuals was preserved. This includes: reviewing and commenting on all State plans, budgets, and policies which affect older persons, and providing technical assistance to any agency, organization, association or individual representing the needs of older people.²⁰ The 2000 Amendments also retained the strong state requirements regarding delivery of legal assistance. The State agency is still required to coordinate legal assistance within the state, provide technical assistance in the provision of legal assistance to older persons in the state, and support the furnishing of training and technical assistance for legal assistance for older individuals.²¹ The State agency is also required to evaluate the need for legal assistance and develop a standardized process to determine the extent to which existing programs and resources have the capacity and actually are meeting the need for legal assistance.²²

The 2000 Amendments also retained the 1992 Amendments addition of priority legal issues, but relocated the provision from Section 307(a)(15)(E) to 307(a)(11)(E). The State plan still must contain “... *assurances that area agencies on aging will give priority to legal assistance related to income, health care, long-term care, nutrition, housing, utilities, protective services, defense of guardianship, abuse, neglect, and age discrimination.*”²³ Other state obligations retained by the 2000 Amendments include 1) assuring that the AAA’s attempt to involve the private bar, including pro bono and reduced fee services, 2) assuring that legal programs serve those in social or economic need, 3) providing for coordination, advice and TA on the provision of legal assistance, and 4) supporting the furnishing of training and technical assistance.²⁴ Lastly, the state has the responsibility under Section 307(a)(11) to assure that the area agencies are performing their “other obligations” as discussed below in the next question.

Question 8

Did the 2000 Amendments make any changes to any of the “other obligations” that the area agencies have regarding legal assistance and who may provide it?

The 2000 Amendments did not make any substantive changes to the “other obligations” of area agencies. The Amendments retained the bulk of provisions regarding who may provide legal assistance. Area agencies must contract with legal assistance providers 1) who have the experience or capacity to provide legal assistance, and 2) who agree to be subject to those

Legal Services Corporation Act regulations determined appropriate and adopted as regulations by the Assistant Secretary for Aging.²⁵ Area agencies must still select providers who will give priority to legal issues involving income, health care, long-term care, nutrition, housing, utilities, protective services, defense of guardianship, abuse, neglect, and age discrimination.²⁶ Overall, the area agency is responsible for making sure that the legal provider they select is the “... *entity best able to provide the particular services.*”²⁷

While the OAA does not address the issue of how many legal providers an area agency should contract with, we believe that area agencies should not divide limited funding among multiple providers unless it is necessary to meet the need or if most efficient. For example, where a planning and service area needs to address special ethnic or geographic needs, several providers may be required to provide adequate legal assistance to various target groups or to different geographic areas. However, area agencies must keep in mind when contracting with more than one legal services provider that the sum of the amounts paid to each provider must equal at least the minimum proportion of funds specified by the State agency to be expended on legal assistance.²⁸ Title III-B legal assistance providers also still must target their services to older individuals with social or economic need. If a provider is not an LSC project him/herself, he/she must coordinate services with existing LSC projects in order to concentrate the use of Title III-B funds on individuals with the greatest need.

Under the 2000 Amendments, the area agencies are still required to attempt to involve the private bar in providing legal assistance.²⁹ This includes involving groups within the private bar to furnish services to older individuals on a *pro bono* and reduced fee basis. The 2000 Amendments also retained the restriction that state and area agencies may not provide supportive services (including legal assistance) directly. This is true unless, in the judgment of the State agency: 1) direct provision of the service is necessary to ensure an adequate supply of such services, 2) the services are directly related to the State or area agency’s administrative functions, or 3) the service can be provided more economically, and with comparable quality, by the State or area agency.³⁰ Furthermore, if a state or area agency were to provide legal services directly, the agency would still need to meet all the requirements for legal assistance services under the OAA.

Question 9

Did the 2000 Amendments make any changes to who must be served or which elderly are eligible for legal assistance?

While the 2000 Amendments did not make any substantive changes to who must be served or which elderly are eligible for legal assistance, the Amendments added an emphasis on targeting *those older individuals residing in rural areas* to numerous sections in the OAA.³¹ For example, Section 202(a)(27), which formerly required AoA to evaluate the effectiveness of state

and local efforts in targeting the most socially and economically needy, was replaced with a provision requiring improved rural service delivery. This requires the Assistant Secretary to use research, develop a resource guide, provide training, and submit a report on how the states are improving.³²

The overall emphasis on targeting legal assistance to those older persons in greatest social and economic need, with an emphasis on low-income minorities, was retained. The challenge under the 2000 Amendments remains how to target those older persons in greatest social and economic need without utilizing a “means test.” Regulations promulgated under the 1987 Amendments (which are currently the most recent Regulations available for the OAA) define “means test” as “*the use of an older person’s income or resources to deny or limit that person’s receipt of services[.]*”³³

In the past, the prohibition against means testing was specifically addressed in the Regulations,³⁴ while the Act dealt with it only indirectly in terms of “targeting.” The 2000 Amendments now address it directly in a new Section 315 which allows states to implement “cost sharing” for many OAA services, but strictly prohibits it for the elder rights services -- including legal assistance -- and certain other outreach, nutrition and tribal services.³⁵ Only voluntary contributions are allowed for these types of services, and Section 315(b)(3) prohibits the use of a “means test” for any service for which voluntary contributions are accepted. Legal assistance providers still should only inquire about income while in the process of counseling and representation or to determine additional benefits for which a person may be eligible.³⁶ Providers clearly may not use an older person’s income as a “means test” to determine whether or not to provide the older person with legal assistance.

The 2000 Amendments still require that outreach efforts be utilized to identify specific target groups of older persons eligible for assistance. The groups to be targeted still include older persons with: greatest economic and social need (with particular attention to low-income minority persons), severe disabilities, limited English-speaking ability, and older individuals with Alzheimer’s disease or related disorders, and now an emphasis has been added targeting older individuals residing in rural areas.³⁷ To further ensure that legal services go to those in greatest social need, namely those who have lost or are at risk of losing their autonomy through guardianship, the 2000 Amendments retained restrictions in Section 321(a)(6)(B) on the role in guardianship cases, limiting representation of petitioners to cases where the petitioners are age 60 and over and where other adequate representation is unavailable.

Question 10

Did the 2000 Amendments make any changes to whether contributions for legal services are permitted or encouraged under the OAA?

The 2000 Amendments clarified whether contributions for legal assistance are permitted or encouraged under the OAA. Prior to the 2000 Amendments, the

OAA was silent on whether legal assistance providers were required to provide their clients with an opportunity to contribute voluntarily to the cost of service. As discussed in Question 9, the 2000 Amendments added a new Section 315, titled “Consumer Contributions,” which addresses cost sharing and voluntary contributions. Section 315(b)(1) specifically allows for voluntary contributions for all OAA services, including legal assistance, provided that the method of solicitation is “noncoercive” (which is not defined by the OAA and may need to be fleshed out in future regulations). Section 315(b)(2) requires area agencies to consult with the relevant service providers and older individuals to determine the best method for accepting voluntary contributions. However, it is noteworthy that area agencies and service providers are strictly prohibited under Section 315(b)(3) from “means testing” for any service for which contributions are accepted and from denying services to any person who does not contribute to the cost of the service. Under Section 315(b)(4), the area agencies must ensure that each service provider will

- A) provide each recipient with an opportunity to voluntarily contribute to the cost of the service;*
- B) clearly inform each recipient that there is no obligation to contribute and that the contribution is purely voluntary;*
- C) protect the privacy and confidentiality of each recipient with respect to the recipient’s contribution or lack of contribution;*
- D) establish appropriate procedures to safeguard and account for all contributions; and*
- E) use all collected contributions to expand the service for which the contributions were given.*

The 2000 Amendments leave it up to the area agencies to determine how exactly to seek voluntary contributions for legal assistance. Certain parameters are set: the method must be “noncoercive,” confidentiality must be maintained, and a “means test” may not be utilized. Otherwise, it is up to the area agencies to consult with the service providers in their planning and service area to determine the best method for accepting the voluntary contributions. Also noteworthy is the requirement that all collected contributions must be used to expand the service for which the contributions were given. It necessarily follows that any voluntary contributions collected from a legal assistance client must be used to expand legal assistance.

Question 11

Did the 2000 Amendments make any changes to what types of data must be collected regarding the use of, and level of support for, legal assistance?

The 2000 Amendments retained the majority of the data collection provisions under the OAA. Section 202(a)(19) was redesignated as Section 202(a)(16), but it still requires the Administration on Aging to collect statistical data on the programs and activities carried out with funds provided by the OAA. The

Administration must collect statistical data on such things as: the aggregate amount of funds expended to provide specific services; the number of individuals who received the service; number of units of service provided; and the extent to which area agencies met the requirement to expend an “adequate proportion” of IIIB funds for the three priority services, including legal.³⁸ Also, under the new 202(a)(19), the Administration on Aging must conduct strict monitoring of state compliance with OAA requirements in order to prohibit conflicts of interest and to maintain the integrity and public purpose of services provided and service providers under the OAA. The 2000 Amendments also redesignated Section 202(a)(27) as 202(a)(24). This provision had previously required AoA to conduct a study of ways in which Federal funds might more effectively target low income minority older individuals. The new Section 202(a)(24) requires AoA to establish a pension counseling and information program and report to Congress on it.³⁹

The 2000 Amendments also retained other key data collection provisions, such as Section 202(a)(29), which is now renumbered as Section 202(a)(26). It requires the Administration on Aging to

design and implement, for purposes of compliance with paragraph (19)⁴⁰, uniform data collection procedures for use by State agencies, including --

- A) uniform definitions and nomenclature;*
- B) standardized data collection procedures;*
- C) a participant identification and description system;*
- D) procedures for collecting information on gaps in services needed by older individuals, as identified by service providers in assisting clients through provision of supportive services; and*
- E) procedures for the assessment of unmet needs for services under this Act[.]⁴¹*

The collected data is then to be compiled and submitted by the Administration on Aging in a report to the President and Congress.⁴² The report still requires specifics such as an analysis of information regarding the effectiveness of the state and area agencies in targeting older individuals in greatest economic and social need. Overall, the central focus is still retained by the 2000 Amendments: Congress and the President must be able to obtain reliable information on the success the OAA’s programs are having in reaching their target populations – those in greatest social and economic need, with an emphasis on low-income minority older persons and older persons residing in rural areas.

Lastly, the 2000 Amendments added a new provision on Performance Outcome Measures. Section 202(f)(1) now requires the Assistant Secretary (in collaboration with a representative group of State agencies, tribal organizations, area agencies, and providers of services) to “...develop and

publish by December 31, 2001, a set of performance outcome measures for planning, managing, and evaluating activities performed and services provided under [the OAA].” The Assistant Secretary is required to review performance outcome measures currently in use by state and area agencies, and then develop a proposed set of measures that is to be piloted and evaluated at the state and local levels.⁴³ It is our belief that Performance Outcome Measures do not replace more traditional reporting, but rather they are a complement to traditional reporting. If carefully planned and implemented, Performance Outcome Measures have great potential for delivering more meaningful information on the impact of legal assistance in the lives of the most vulnerable older people.⁴⁴

Question 12

Did the 2000 Amendments make any changes to attorney-client confidentiality under the OAA?

The 2000 Amendments preserved the importance of confidentiality in the relationships between legal providers and their clients. The 2000 Amendments did not make changes to any of the three sections⁴⁵ that mention attorney-client privilege. The OAA still provides that area agencies, states, and State agencies are prohibited from requiring any provider of legal assistance to reveal any information that is protected by the attorney-client privilege. Legislative history from the 1987 Amendments makes it clear that the intent of Congress was to protect the identity of clients. Prohibited information-collecting does not include information needed for the purposes of evaluation, planning, or needs assessment, since this information could be obtained without disclosure of the names and addresses of Title III-B clients.⁴⁶

¹ Krista L. Campeau, J.D. is a Staff Attorney for The Center for Social Gerontology. Portions of this article were excerpted from Chapter One of the *Comprehensive Guide to Delivery of Legal Assistance to Older Persons* (1988, Updated 1992 and 1994). The citations for this article refer only to the Older Americans Act (OAA) as amended by the 2000 Amendments. Parallel citations to the United States Code were not available at the time of this printing because an Official Compilation of the OAA had not yet been published.

² OAA § 306(a)(2)(A-C) provides that the three categories of Title IIIB priority services are access, in-home, and legal assistance. The priority services are authorized through their inclusion in Title III-B “Supportive Services;” OAA § 321(a)(6) designates legal assistance as a support service that is to be funded under Title IIIB.

³ OAA § 102(31) (Emphasis added).

⁴ OAA § 306(a)(2)(A-C).

⁵ OAA § 307(a)(2)(C) (Emphasis added).

⁶ OAA § 307(a)(11)(D).

⁷ OAA § 306 (b).

⁸ OAA § 316(a)(1-4) (Emphasis added).

⁹ OAA § 316(b)(1).

¹⁰ OAA § 316(b)(2-3) (Emphasis added).

¹¹ OAA § 316(c).

¹² OAA § 316(d).

¹³ OAA § 305(a)(1)(E).

¹⁴ Alaska, Delaware, District of Columbia, Nevada, New Hampshire, North Dakota, Rhode Island, South Dakota, and Wyoming.

¹⁵ OAA § 305(c)(5) (Emphasis added).

¹⁶ OAA §307(a).
¹⁷ OAA § 306(a).
¹⁸ OAA § 307(a)(13).
¹⁹ OAA § 731.
²⁰ OAA § 305(a)(1)(D).
²¹ OAA § 307(a)(11)(C).
²² OAA § 307(a)(2)(A&B).
²³ OAA § 307(a)(11)(E).
²⁴ OAA § 307(a)(11)A-C).
²⁵ OAA § 307(a)(11)(A).
²⁶ OAA § 307(a)(11)(E).
²⁷ OAA § 307(a)(11)(B).
²⁸ OAA § 306(a)(2)(C), 307(a)(2)(C).
²⁹ OAA § 307(a)(11)(A)(iii).
³⁰ OAA § 307(a)(8)(A).
³¹ See OAA §§ 202(27)(A-D), 203(a)(3)(A), 206(a), 207(a)(3), 305(a)(1)(E), 306(a)(1), and 307(a)(3)(B).
³² OAA § 202(27)(A-D).
³³ 45 CFR §1321.3.
³⁴ 45 CFR § 1321.67(c).
³⁵ OAA § 315(a).
³⁶ 45 CFR § 1321.71(d), (e).
³⁷ OAA § 307(a)(16)(A)(i-vi).
³⁸ OAA § 202(a)(16)(A-C).
³⁹ OAA § 215(i).
⁴⁰ TCSG believes this is an error in the 2000 Amendments to the OAA. Because the data collection provisions being referred to here were previously at § 202(a)(19) and were redesignated as § 202(a)(16) in the 2000 Amendments, we believe that the reference here to "paragraph (19)" should be corrected to read "paragraph (16)."
⁴¹ This is the existing data collection system commonly referred to as NAPIS -- National Aging Program Information System.
⁴² OAA § 207(a).
⁴³ OAA § 202 (f)(2)(A-D).
⁴⁴ For more information on Performance Outcome Measures, see *Outcome Measures for Title IIIB Legal Assistance Programs: An Introduction*, in *Best Practice Notes on Delivery of Legal Assistance to Older Persons*, Volume 10, No. 3, The Center for Social Gerontology, March 2000. This BPN can be accessed at www.tcs.org/bpnotes/bpn.htm.
⁴⁵ OAA §§ 306(d), 307(f), and 705(b).
⁴⁶ Rep No 97, 100th Cong, 1st Sess 122 (1987).

**NATIONAL AGING &
LAW CONFERENCE
ANNOUNCED**

The AARP Foundation has announced the second National Aging and Law Conference: *Strengthening Protections and Building Bridges to Enhance Elder Rights*. The Conference is sponsored by AARP Foundation's National Training Project, together with the ABA Commission on Legal Problems of the Elderly, National Academy of Elder Law Attorneys, National Senior Citizens Law Center, The Center for Social Gerontology, and the Center for Medicare Advocacy. It will be held October 10-13, 2001 at the Crystal Gateway Marriott in Arlington, VA. For more information on topics, registration, and reservations, contact --
 Ada Albright at (202) 434-2197, email: aalbright@aarp.org, or
 Donna Barker at (202) 434-6862, email: dbarker@aarp.org