

**STATES' MINIMUM
PERCENTAGE OF
TITLE IIIB FUNDS
FOR LEGAL
ASSISTANCE**

As discussed in the previous article (Question 3), the 2000 Amendments to the Older Americans Act retained the provision calling on State agencies to establish a minimum proportion/percentage of Title IIIB funds to be expended by area agencies, in the absence of a waiver, on each of the IIIB priority services. The three priority services are: access, in-home, and legal assistance. In TCSG's 1998 *National Survey of Legal Assistance for the Elderly*, we had compiled information on the minimum percentages set by the states for legal assistance. We recently updated this information by polling each state for three things: (1) the minimum percentage of IIIB funds established for legal services; (2) the number of waivers granted allowing area agencies to expend no IIIB funds on legal services; and (3) the number of waivers granted allowing area agencies to expend less than the IIIB minimum on legal services. That updated information is presented below.

The "minimum proportion" each state has set for funding legal assistance varies greatly, ranging from a high of 11% to a low of 1%, with some having no set percentage. In some States where the State agency also serves as the area agency, a specified dollar amount is used rather than a percentage. While there are still some waivers, the numbers have decreased since we last collected information. One of the most challenging tasks for state legal services developers is to make sure that the approach taken by their state leads to a level of funding that is adequate to allow for high quality, high impact legal services programs and for targeting services to those in greatest need.

Note: As discussed in Question 5 of the previous article, eight states (AK, DE, NV, NH, ND, RI, SD, WY) and DC have no area agencies; the State agency functions as both state and area agency. For these nine, in the two columns of the chart describing the number of waivers granted by the state to its area agencies, we indicate "No area agencies."

STATES	Minimum percentage of Title IIIB funds for legal assistance	# of waivers to expend no IIIB funds	# of waivers to expend less than IIIB minimum
ALABAMA (13 AAAs)	6.7%	None	None
ALASKA (0 AAAs)	No set % ¹	No area agencies	No area agencies
ARIZONA (8 AAAs)	4%	Two ²	None
ARKANSAS (8 AAAs)	2%	None	None
CALIFORNIA (33 AAAs)	No set % ³	None	Not applicable
COLORADO (16 AAAs)	3%	None	None
CONNECTICUT (5 AAAs)	6%	None	None
DELAWARE (0 AAAs)	1%	No area agencies	No area agencies
DISTRICT OF COLUMBIA (0 AAAs)	Flat amount used instead of minimum % ⁴	No area agencies	No area agencies
FLORIDA (11 AAAs)	1%	None	None
GEORGIA (12 AAAs)	5% or \$40,000, whichever is greater ⁵	None	None
HAWAII (4 AAAs)	No set %	None	Not applicable
IDAHO (6 AAAs)	3%	None	None

ILLINOIS (13 AAAs)	2.9%	None	None
INDIANA (16 AAAs)	3%	None	None
IOWA (13 AAAs)	3%	None	None
KANSAS (11 AAAs)	5%	None	None
KENTUCKY (15 AAAs)	No set %	None	Not applicable
LOUISIANA (36 AAAs)	5%	One	None
MAINE (5 AAAs)	10%	None	None
MARYLAND (19 AAAs)	5%	One	None
MASSACHUSETTS (23 AAAs)	8% but with maintenance of effort	None	None
MICHIGAN (16 AAAs)	5.6% ⁶	None	None
MINNESOTA (14 AAAs)	No set % ⁷	None	Not applicable
MISSISSIPPI (10 AAAs)	No set % ⁸	None	Not applicable
MISSOURI (10 AAAs)	1%	None	None
MONTANA (11 AAAs) **	4%	Not available	Not available
NEBRASKA (8 AAAs)	2%	None	None
NEVADA (0 AAAs)	No set %	No area agencies	No area agencies
NEW HAMPSHIRE (0 AAAs)	Flat amount used instead of minimum % ⁹	No area agencies	No area agencies
NEW JERSEY (21 AAAs)	5%	None	None
NEW MEXICO (6 AAAs)	7%	None	None
NEW YORK (59 AAAs)	7%	None	None
NORTH CAROLINA (17 AAAs)	2%	None	None
NORTH DAKOTA (0 AAAs)	Flat amount used instead of minimum % ¹⁰	No area agencies	No area agencies
OHIO (12 AAAs)	5%	None	None
OKLAHOMA (11 AAAs)	No set % ¹¹	None	Not applicable
OREGON (18 AAAs) **	3%	None	None
PENNSYLVANIA (52 AAAs)	No set % ¹²	None	Not applicable
RHODE ISLAND (0 AAAs)	No set %	No area agencies	No area agencies
SOUTH CAROLINA (10 AAAs)	1%	One	One
SOUTH DAKOTA (0 AAAs)	3%	No area agencies	No area agencies
TENNESSEE (9 AAAs)	2%	None	None
TEXAS (28 AAAs)	No set % ¹³	None	Not applicable
UTAH (12 AAAs)	2%	None	None
VERMONT (5 AAAs)	10% ¹⁴	None	None
VIRGINIA (25 AAAs)	1%	None	None
WASHINGTON (13 AAAs)	11%	Two ¹⁵	None
WEST VIRGINIA (4 AAAs)	Flat amount used instead of minimum % ¹⁶	None	Not applicable
WISCONSIN (6 AAAs)	5%	None	None
WYOMING (0 AAAs) **	No set %	No area agencies	No area agencies

** Because TCSG was unable to obtain updated data from Montana, Oregon and Wyoming, data available from the 1998 *National Survey of Legal Assistance for the Elderly* are included here.

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- ¹ Alaska does not have an established minimum percentage; rather they use a set amount of funds. \$150,000 per year is awarded to Alaska Legal Services, and \$120,000 goes to Older Persons Action Group for publication of materials -- the Senior Voice newspaper. This is approximately 5% of their IIIB allotment.
- ² The two Arizona area agencies that have waivers to expend no Title IIIB funds on legal assistance are Tribal area agencies. Legal services are provided for the tribal entities through other sources of funds including Legal Services Corporation and some monies from the tribe.
- ³ The percentage of IIIB funds in California is variable area to area; levels among the 33 area agencies range from 3% to 57%.
- ⁴ The AoA Regional Office determined from its inception that the District of Columbia Office on Aging is allowed to allocate \$54,440 of Title IIIB to be expended on legal services. In FY 2000, the Office received \$1,546,144, and in FY 2001 it received \$1,609,156. Thus, for the past two years, it has allocated approximately 3.5% to legal services.
- ⁵ Georgia takes a noteworthy approach, and looks at minimum funding both in terms of a minimum percentage and also a minimum dollar amount deemed necessary for a legal services program. Georgia requires a minimum of 5% of IIIB funds or \$40,000 -- whichever is greater -- and no less than \$20,000 must come from Title IIIB funds. The State agency has a small amount of money to supplement those area agencies that are unable to meet the \$40,000 minimum. In addition to the area agency funding, the State agency has been successful in getting over \$400,000 in state funds for three types of statewide elder rights activities in FY 2002. One (\$185,307) is for legal assistance providers to conduct regional community education and for the legal services developer to develop materials and conduct community education. The second (\$150,000) is for the Senior Legal Hotline. The third (\$99,148) is for elder abuse prevention activities.
- ⁶ While Michigan has a set minimum percentage of 5.6%, the statewide average must be 8%. If the statewide average falls below 8%, the overall minimum will rise in order to maintain the 8% statewide average.
- ⁷ While there is no official policy in Minnesota, the rule of thumb is 5% and none of the area agencies go below 5%.
- ⁸ Mississippi has no set percentage; the amount varies based upon intrastate formula.
- ⁹ New Hampshire spends a flat amount of \$133,627 per year.
- ¹⁰ North Dakota spends a flat amount of \$125,000 per year.
- ¹¹ Funding in Oklahoma is not based on an absolute percentage; levels among the 11 AAAs range from 6% to 29%.
- ¹² The area agencies in Pennsylvania receive an Aging Services Block Grant (ASBG) for various services that includes funds from a number of sources, e.g. Title IIIB, state general funds, lottery, etc. Each area agency determines the amount of ASBG funds to be budgeted for legal assistance. The state tracks the funds and sources for all AAAs. For FY 99/00, \$1,510,904 was expended for legal assistance. Of that amount, \$758,917 was federal, \$133,873 was state, and the balance was from local sources.
- ¹³ Minimum percentage in Texas is determined locally by the AAAs; statewide average is approximately 6-7%.
- ¹⁴ For FY2000, the five Vermont area agencies together spent \$218,556 on legal services, which represents 14.1% of their original Title IIIB allocation. However, these original IIIB allocations were augmented by transfers from Title IIIC (nutrition) to IIIB, and since Vermont requires the 10% calculation after the area agencies have completed any inter-title transfers, the true percentage reported to AoA was 11.8%.
- ¹⁵ The two Washington area agencies that have waivers to expend no Title IIIB funds on legal assistance are Tribal area agencies. Legal services in these two Tribal areas are funded from other sources.
- ¹⁶ West Virginia has one statewide legal assistance program. The State agency combines the IIIB funds for legal services for each of the four area agencies and supplements it with State funds. One of the area agencies (Northwestern AAA) then administers the statewide contract with WV Senior Legal Aid. WV Senior Legal Aid has additional sources of funding including a three-year AoA discretionary grant which helped expand the senior legal advice and referral hotline.

**NEW FEATURES ON
TCSG'S WEBSITE**

TCSG has a number of new items of interest to the law and aging network on our Web site. These include:

***Unofficial
Compilation
of the Older
Americans Act***

Responding to the desire of many members of the Aging Network to have access to a complete, updated version of the OAA, TCSG put together an *Unofficial Compilation of the Older Americans Act* that cuts and pastes the changes made by the 2000 Amendments (HR 782) into the prior OAA language. All seven Titles, plus a brief description of the changes regarding the White House Conference on Aging, can now be accessed directly at the OAA Reauthorization section of TCSG's web site. Go to the web site at: <http://www.tcsg.org> and then click on Law and Aging and then click on OAA Reauthorization. For convenience in downloading the documents, we have put each Title of the OAA in a separate pdf file. **Caveat:** Because this is an "unofficial compilation" of the OAA, it is possible that there are some mistakes in it. If you should discover errors, we urge you to email Penny Hommel at phommel@tcsg.org so that we can make the necessary corrections.

***State Legal Services
Development***

TCSG now has a new section on our "Law & Aging" page devoted to *State Legal Services Development*. This was created to provide comprehensive information and resources to enhance efforts by Legal Services Developers, providers of legal assistance for the elderly, state and area agencies on aging, policymakers and others to promote the delivery of high quality, high impact legal assistance targeted to the most vulnerable older Americans. One of its features is titled "Recent News about Legal Services & Elder Rights Developments," which is updated regularly. It contains news items concerning national, state and local activities directly related to state legal services development issues, e.g., the new OK Legal Services Developer law (see article on page 19), Georgia State funding for community legal education and the senior legal hotline, AoA initiatives, OAA and LSC appropriations, innovative elder rights and/or legal services activities, development of performance outcomes and statewide reporting systems, activities of legal services developers, etc. We have already received a tremendous amount of positive feedback on this new section and a number of valuable suggestions on additional things to include, links to establish, etc. Please help us continue to make it better by emailing your ideas and information to Jim Bergman at jbergman@tcsg.org. You can directly access the "State Legal Services Development" section at <http://www.tcsg.org/lsdpage.htm>

**TCSG GUARDIANSHIP
MEDIATION TRAINING
TO BE HELD
JUNE 3-5, 2001**

A limited number of spaces remain available for TCSG's Fifth Annual Adult Guardianship Mediation Training. It will be held in Ann Arbor, MI on June 3-5, 2001. For more information, please see our web site at -- www.tcsg.org/mediation/training.htm

**LANDMARK
OKLAHOMA LAW
ESTABLISHES OFFICE
OF LEGAL SERVICES
DEVELOPMENT**

Oklahoma recently took a pioneering step that provides an excellent model for other states wishing to ensure strong state leadership on elder rights and legal assistance development. On April 16, 2001, Oklahoma Governor Keating signed into law a first-in-the-nation act (Enrolled Senate Bill No. 789) which requires that an "Office of Elder Rights and Legal Assistance Services Development" be established by the Aging Services Division of the Dept. of Human Services. The purpose of the new Office is "to provide leadership for improving the quality and quantity of legal and advocacy assistance as a means of ensuring a comprehensive elder rights system for Oklahoma's vulnerable elderly." The Office will be headed by Oklahoma's Legal Services Developer and Past President of the National Association of Legal Services Developers, Richard Ingham.

The landmark Oklahoma law firmly establishes for the State both an overall vision, and an enumeration of State leadership activities necessary to achieve a comprehensive elder rights system. It is modeled on the Elder Rights & Legal Assistance Development Chapter (Chapter 4) of Title VII of the federal Older Americans Act as passed in 1992. While the 2000 OAA Amendments retained the most essential provisions in Chapter 4, the overriding purpose statement as well as a number of State responsibilities were eliminated from the federal law in 2000. The Oklahoma law has now captured and even enhanced the vision of state leadership provided in Chapter 4 of Title VII, and has made explicit that such leadership requires -- at a minimum -- a full time legal services developer.

TCSG applauds Oklahoma not only for the result achieved but also for the process followed. It is excellent example of effective working relationships among the developer and the aging and legal services networks. Passage of the legislation was one of the top priorities of the Oklahoma Aging Network, including the Silver-Haired Legislature, this session, reflecting the high regard in which the Oklahoma Legal Services Developer is held by all parties, including the legislative and executive branches.

We have numerous examples of the value of states enacting their own laws to address other elder rights programs, for example state long-term care ombudsman and abuse prevention laws. We hope that the Oklahoma Elder Rights and Legal Services Development law will now provide a model that will be pursued by other States, and endorsed by key national organizations such as NASUA, NAAAA and NASOP. The process of drafting and building support for such legislation can be extremely educational, for all involved, regarding the numerous important roles of developers and the need for at least a full-time person to accomplish the essential tasks. We encourage national groups to institute training sessions on how to replicate the bill, or parts of it, in other states. The passage of such legislation reflects a commitment by the State to protecting rights of its most vulnerable older citizens, and a recognition of the important leadership role of the state legal services developer in ensuring this protection.