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**STATE
LEGAL
ASSISTANCE
DEVELOPMENT
PROGRAM
STUDY**

***“Finding a Place in the
Elder Rights
Puzzle”***

**Natalie K. Thomas, Esq.
Richard Ingham, Esq.**

A report from the study on the

**STATE LEGAL ASSISTANCE
DEVELOPMENT PROGRAM –**
“Where it is and where it should be”

**This study and the report upon which it is based were made possible
with funding from the Borchard Center on Law and Aging.**

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PREFACE AND ACKNOWLEDGEMENTS

It gives me great pleasure to present the results of the first Study on State Legal Assistance Development Programs. I am extremely grateful for funding from the Borchard Center on Law & Aging for recognizing the significance and importance of the purpose and work of Legal Services Developers. Legal Services Developers are mandated to act as the lead person for each state and territory to ensure the development of the Title III B legal services programs that provide legal assistance to persons 60 years of age and older. We have long since known that while this program works better in some states, there are some states in which it does not function at all. To date, there has not been a comprehensive look at what is available in terms of legal services development in each state. Richard Ingham, the Oklahoma Legal Services Developer, and I requested a study grant from the Borchard Center on Law & Aging in 2002 to conduct such a study. From June 2002 through August 2003, we have used different tools to obtain as much information from as many legal services developers as possible.

Sincere appreciation is extended to those providing guidance, assistance and support for this venture, including: The Georgia Department of Human Resources Division of Aging Services; The Oklahoma Department of Human Services Aging Services Division; and our grant administrators, The Center for Social Gerontology, Ann Arbor, MI. We are grateful to Danny Katz, recent University of Michigan graduate, who provided invaluable assistance in evaluating and charting the data from the organizational survey and assisting with the organization of the Retreat and Stephanie Suen of TCSG who assisted with analysis, review and arrangements for printing; Barbara Dieker and Brandt Chvirko from the U.S. Administration on Aging who were extremely generous with their time and helpful to us at the Retreat; and, to the Retreat Facilitators (Jim Bergman, Penny

Hommel, Dawn Washington and Rick Wingo) who worked extremely long and hard to help the developers search and find their answers to numerous questions.

A special thanks goes to each developer participating in any Phase of this study and to those in their offices and divisions on whom they had to rely for assistance. The developers worked extremely hard to provide the information that was needed at various stages of the study and I sincerely appreciate the time and effort that I know went into the work that was required.

Finally, I humbly recognize the team of reviewers: from the Georgia Division of Aging Services: Maria Greene, Director; Patsy McDoodle, Information Specialist; Allan Goldman, Executive Assistant to the Director and from the U.S. Equal Employment Opportunity Commission, Atlanta District Office-Legal Unit, Aval Baker. Their diligence and thoroughness ensured the essential objectivity and clarity of this report.

It is my hope that the results presented here will cause anyone in a position to improve the status of State Legal Assistance Development Programs, to pause, consider how they can be of assistance and to then work with individual developers, the National Association of Legal Services Developers and State Units on Aging to help this program become the benefit to Older Americans that it was truly meant to be.

Natalie K. Thomas, Esq.
Legal Services Developer
State of Georgia
Principal Investigator

INTRODUCTION

Think of a sports team. It's not important which one. Just think of a team. Now imagine that the team wants to be the best of all teams. With that goal in mind, imagine that team without the following:

- ❖ No designated place or time to practice
- ❖ No paid coach or manager
- ❖ No play book
- ❖ No eligibility criteria for members
- ❖ No operating funds to pay for the top draft picks, training camp or equipment

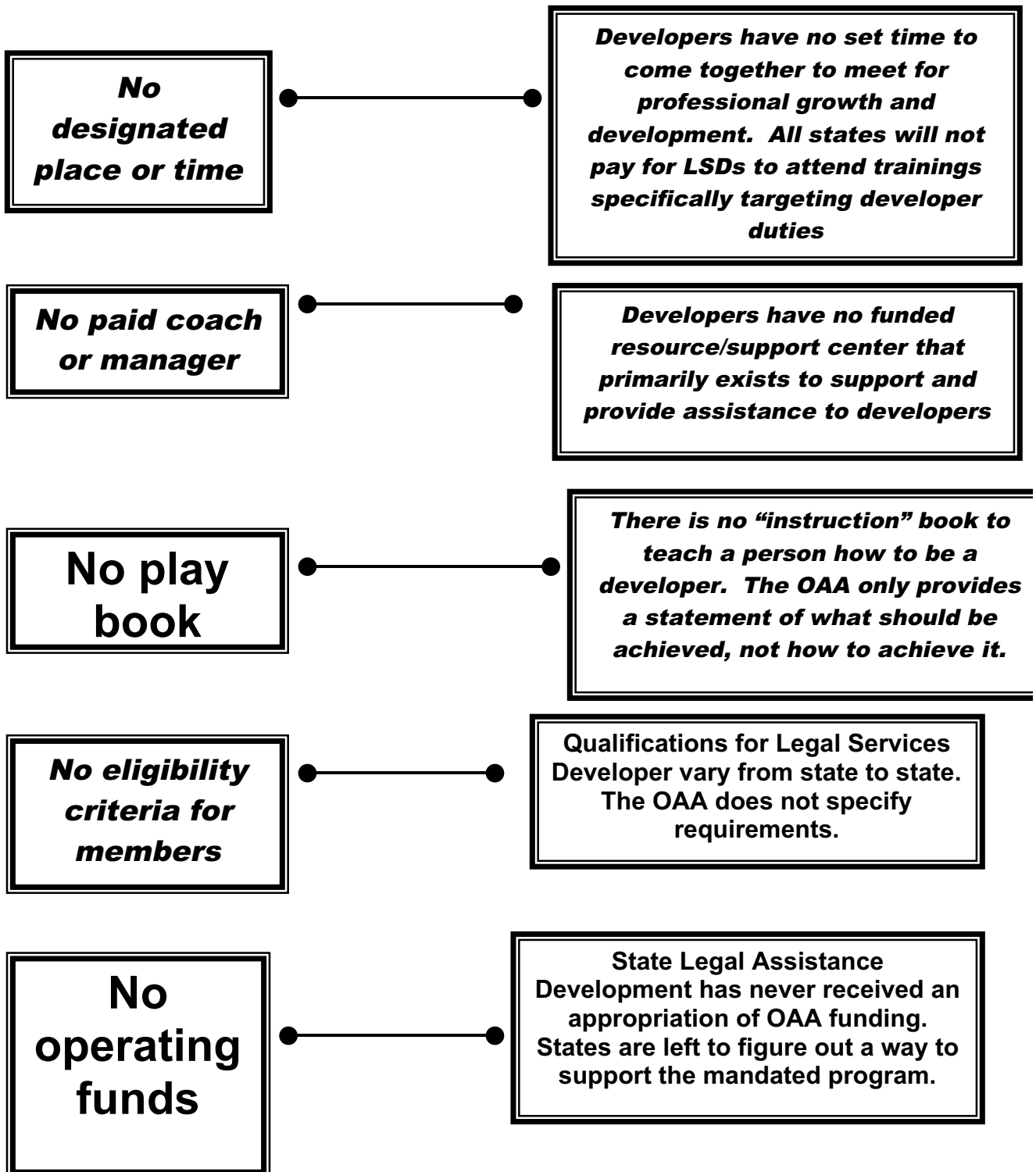
Then you discover that—

- Some of the members of the team have a lot of experience but others have never played the game before and do not know what the game is all about, and finally that,
- Your team is not complete because some of the positions are vacant and no one knows when they are going to be filled.

This is hardly a team that you're going to put a great deal of confidence in ever having a winning season. There are numerous areas in which the team is deficient making success almost impossible. The odds of defeat are almost insurmountable. Yet, one cannot afford to walk away and give up on this team. This is one time that the fans are so important that their welfare outweighs the deficiencies of this sports team. These fans are not mere spectators or bystanders — they are beneficiaries. They really do win when this team wins. The fans are persons 60 years of age and older whose homes, healthcare, long term care needs, financial well being, and personal independence, safety and dignity may well depend upon how well these team members accomplish the goals of this game.

Who are the players of this team?

They are the State Legal Services Developers¹



Executive Summary

In May 2002 the Borchard Center on Law and Aging awarded \$15,000 to Natalie Thomas, Georgia Legal Services Developer, and Richard Ingham, Oklahoma Legal Services Developer, to compare the Legal Assistance Development Programs in various states to see where the strengths and weaknesses of the program lie. In addition, the study was to identify any barriers that would prevent a program from realizing its full potential. Finally, the co-investigators expected that once the weaknesses and barriers were identified, recommendations would be made for strengthening the program where it is weak to enable it to be as beneficial as possible to those persons 60 years of age and older who rely on the results of the success of the program.

The study was divided into three phases: Phase I – An Organizational Structure Mini - Survey, Phase II — An In-depth Survey, and Phase III – A Facilitated Discussion Retreat. These are the results of that study.

Methodology

When a system for delivering services is fragmented and underdeveloped, that system's yield is deficient and has miniscule impact. Those using the system are deprived. This study takes a closer look at the current capacity of the Older Americans Act (hereafter, OAA) Title VII, Chapter 4 State Legal Assistance Development Programs of as many states as were willing to participate.

The study initially began with thirty-four (34) states participating and as the study progressed, participation from a number of states decreased. A mini-survey was developed to obtain some baseline information from each state. This survey was

automated and made accessible through the Internet by the staff of the Oklahoma Department of Human Services, Aging Division Information and Technology. Thirty-four (34) states responded.

To complete the study process, a facilitated discussion retreat was planned with the intention of having at least half of those responding to the initial mini-survey attend and take part in intensive discussions in a few of the major areas of concern to developers.

States participating in the mini-survey:

Alabama	Missouri
California	Montana
Colorado	Nebraska
Connecticut	Nevada
Florida	New Hampshire
Hawaii	New York
Idaho	North Carolina
Illinois	Ohio
Indiana	Oregon
Iowa	Pennsylvania
Kansas	South Carolina
Kentucky	South Dakota
Louisiana	Utah
Maine	Vermont
Maryland	Washington
Massachusetts	West Virginia
Michigan	Wisconsin

Once that data was analyzed, an in-depth survey was developed. Participation declined considerably when the in-depth survey was introduced. Initially, the survey was sent to a

test group of developers and AoA Region IV-FL, GA, AL, TN, SC, NC, MS, KY was selected as the test group region. Tennessee had not participated in the study initially and was not included. Mississippi does not have a legal services developer and was excluded. The principal investigator conducting the study is the Georgia developer; therefore, Georgia was also excluded. The remaining five states (FL, AL, SC, NC, and KY) were asked to participate as the test group.

A test group was used to help determine how long it would take to complete the survey and whether or not the questions were clear. We wanted to know whether or not it would be easier to use the survey as a discussion tool or actually complete it in a small

discussion group. Finally, we wanted input on whether assistance was needed by anyone else in the developer's office to answer the questions on the survey.

The test survey was sent in January 2003. Of the five states in the test group, one state, North Carolina, completed the survey before its dissemination to participating developers. Florida's developer could not participate because the General Counsel had left the agency. As Assistant, she had assumed the role of General Counsel and was no longer performing the duties of developer. She did not believe she had the requisite knowledge about the role to continue participation. The Kentucky developer had left her position by the time the test survey was sent and the replacement developer (there has since been another person placed in the position of legal services developer) felt that there was no one at the state level who could respond to the questions on the survey as those duties were not being performed by anyone. The Alabama developer had a number of competing interests for time and was unable to return her survey until July. The South Carolina developer had military responsibilities having been called to active duty due to the war in Iraq and was not able to complete her survey.

In April 2003, the survey was sent to the developers that agreed to complete it. The following states indicated their willingness to participate in Phase II.

California
Colorado
Connecticut
Hawaii
Idaho
Illinois
Iowa
Kansas
Louisiana
Maryland

Michigan
Nevada
New Hampshire
New York
Pennsylvania
Utah
Washington
West Virginia
Wisconsin

Ohio's developer consented to participate only if it could be done away from the office, with expenses paid, and unfortunately, we were not able to meet that preference. Nebraska's developer indicated that he would not be willing to participate further. Montana's acting developer stated that his state was in the process of transferring their program to another person and with budget cuts and position changes; they were in a state of flux and therefore did not wish to participate. Montana's acting developer remains in the position. Developers from California, Colorado, Connecticut, Illinois, Louisiana, New Hampshire, and Washington had not returned their responses as of September 11, 2003. Maryland's developer was unable to participate further due to circumstances beyond his control.

The following states' developers completed the study's Phase II survey:

Alabama; Hawaii; Idaho; Iowa; Pennsylvania; Nevada; New York; North Carolina; Utah; West Virginia; and Wisconsin.

It was decided that Phase III of the Borchard Study Grant on State Legal Assistance Development Programs would be a weekend retreat for approximately one-half of the thirty-four (34) respondents to the mini-survey. The plan was to invite seventeen (17) persons who would be brought together, all expenses paid, to an identified site for the purposes of discussing some key issues that had been raised in the in-depth survey. The use of facilitation tools, experienced facilitators and a facilitation process ensured that there would be opportunity for an exchange of ideas, dialogue, and the expression of consensus and recommendations by a group as opposed to individuals.

In addition, it was decided that a group setting might yield a level of discussion and a level of comfort that would not otherwise be forthcoming from individual surveys that can sometimes, depending upon the responses, be traced back to individual states.

We tried to obtain a cross section of seventeen (17) developers from all across the country based upon their responses provided in the mini-surveys. After weeks of negotiation, we were unable to find that many and eventually settled for twelve (12), who agreed to attend the weekend retreat.ⁱⁱ

A search had been conducted to locate a facility that was most cost effective and accessible to individuals from different parts of the country. Such a location was found in the National Conference Center (NCC) located 12 miles outside of Dulles National Airport in Lansdowne, VA, the former Xerox Document Training Center.

The NCC was selected because it is a self-contained center close to Dulles International Airport that is cost-efficient. The NCC offers meeting space, sleeping rooms, meals and continuous beverage breaks at a low daily rate per person. This allowed us to cover the

costs of the developers and the facilitators to ensure that we had a healthy discussion and a forum for reaching consensus on our recommendations and priorities.

We scheduled the participants' arrival for Friday June 6, 2003, leaving all day Saturday for the bulk of our work and Sunday morning to conclude our sessions. At the end of that period of time, it was our desire to have individual surveys and focus group recommendations as to the needs of State Legal Assistance Development Programs.

SUMMARY OF RESULTS AND RECOMMENDATIONS

The following conclusions and recommendations are based on the observations of the principal investigator of this study. Numerous conclusions can be drawn from the data presented herein. These recommendations should provoke important and deliberate creative ideas and solutions regarding the State Legal Assistance Development Program.

RECOMMENDATION 1:

Every state should have a Legal Services Developer in function and not just in name.

State legal services development does not happen if there is no one in place to see that it does happen. It requires constant work to refine and improve it to meet the needs of its beneficiaries.

RECOMMENDATION 2:

There needs to be a core set of duties that every state should ensure its developer is capable of performing.

There is substantial disparity in what developers believe is their function and role in the state legal assistance development program and what those same developers actually do day-to-day. The two have a wide gap in correlation.

RECOMMENDATION 3:

Legal services developers need to be adequately trained and skilled to competently perform their duties.

Some developers believe that their role does not require them to be integrally involved with the Title III B legal programs even though developers are mandated by the OAA to improve the quality and quantity of legal services to older persons. Integral involvement would indeed include monitoring, site visits, training and technical assistance to Title III B legal providers to plan, build and ensure a program capable of meeting the legal needs of older persons.

RECOMMENDATION 4:

A full time developer is necessary to adequately meet the job responsibilities but in the alternative, no developer should spend less than 75% of his or her time functioning as a legal services developer.

There are enough facets to state legal assistance development to illustrate that a legal services developer whose other hats only leave 5, 10 or 20% of their time available cannot adequately meet the needs of the job. Lack of time, resources and training impedes the success of many developers.

RECOMMENDATION 5:

There must be some guidance from the SUA to AAAs and legal providers to clarify roles, responsibilities and obligations. The fact that the OAA language no longer expressly specifies this task is poor justification for deeming such guidance unnecessary. SUAs cannot rely upon a contract to do business to serve as the only guidance for how business will be conducted.

There is an insufficient focus by SUAs on enforceable, consistent operating rules for providers, AAAs and the SUA. Whether this guidance is called standards, guidelines, or policies and procedures, they are necessary. Such guidance is to state legal assistance development program contracts as regulations are to laws. Laws tell us what the end result is required to be but the regulations tell us how to go about achieving that end result. For states not to have such guidance is irresponsible to the management of the program and to the developer who is trying to provide guidance to the program.

RECOMMENDATION 6:

Developers must have a working relationship with the other Elder Rights Programs, i.e. State Long term Care Ombudsman, Elder Abuse Prevention and State Health Insurance Programs.

The interrelationship between developers and other elder rights programs is critical. A developer in function is integral to the clients served by these

programs. While they each have their own identity focus, working together can have a huge impact on the lives of the vulnerable older persons they serve.

RECOMMENDATION 7:

A resource/support center should be established, funded and dedicated to (1) working with states to ensure that they have a capable, functioning legal services developer in place; (2) provide ongoing technical assistance and resource information; and (3) to be primarily responsible for the training needs of legal services developers.

Many developers who could do more in their positions don't because they do not have the requisite background, knowledge and/or experience necessary to do their jobs. For far too long, developers have had to use a make-shift support system for each other, but consistently run into barriers for even the basic assistance to each other, such as finding a way to pay for a conference call with other developers.

RECOMMENDATION 8:

Congress and the Administration on Aging must work with states to bring Legal Assistance Development from the depths of despair up to the summit of the aging network and require both state and federal governments to demonstrate their commitment to meeting the legal needs of this country's vulnerable elderly.

States have been allowed to rely upon the "unfunded mandate" excuse to allow the state legal assistance development program to fall into a chasm in the aging network.

RECOMMENDATION 9:

A manual or practice guide addressing the most critical operating and delivery issues is needed for State LSDs. Some of the topics that need to be addressed have been developed at Appendix 5.

There is a need for education of state and federal officials about what is required of LSDs and what is actually provided in each state. That will no doubt take time. There is a current critical need for current, periodic and ongoing training and education for State LSDs.

***"What you say merely fills the pages
—
What you do proves you actually mean it."***

--- Natalie Thomas

PHASE I

Organizational Structure Mini-Survey

In the initial analysis of the Organizational Structure Survey, some general trends can be observed. For starters, about 70% of the states that responded to the survey said that they have programs for Ombudsmen, Prevention of Elder Abuse, Neglect and Exploitation and Legal Services Development housed in their state unit on aging or in the aging services division of their state government. Additionally, almost 80% of the respondents said that those programs work together on a regular basis. This percentage includes five respondents who reported not having the above-mentioned programs housed in their division. However, programs led by a person who supervises another one of these programs accounts for only 25% of all the programs.

About two-thirds of the states reported working in conjunction with aging advocacy groups in order to craft and advocate for state legislation to improve the lives of vulnerable adults. According to the respondents, approximately 80% of the states said that their office serves as a focal point for leadership on elder rights, policy review, analysis, advocacy and legal issues for the vulnerable elderly at the state level.

In the next part of the survey, respondents were asked about their authority in order to determine their relative capacity and freedom with respect to their jobs. Almost 75% of the respondents said that they are responsible for analyzing, commenting on, monitoring and developing federal, state and local laws, rules and regulations. Similarly, 70% of the respondents are responsible for the promotion of federal, state and local laws, rules and

regulations serving the vulnerable elderly. Finally, just over 75% of the respondents are responsible for providing such information as necessary to public and private agencies, legislators and other persons regarding issues affecting the vulnerable elderly.

About two-thirds of the respondents said that they regularly speak to interested groups on elder rights topics. The respondents were then asked about their involvement in specific activities. Only 35% of the respondents reported being involved in selecting or assisting SUAs/AAAs with selecting Title III B (T.3 B) legal provider contracts. However, over 70% said that they contact T.3 B legal providers directly to provide information, technical assistance and/or training. Just fewer than 40% said that they provide representation for the SUA or the agency in which they are housed and only one person provides legal representation to T.3 B clients. Of all the parts of the survey, the lowest number of affirmative answers can be found in this section. As for other activities, just under half of the states said that they organize or participate in activities at the state capitol designed to promote interest in state government and senior issues such as Senior Day at the Capitol.

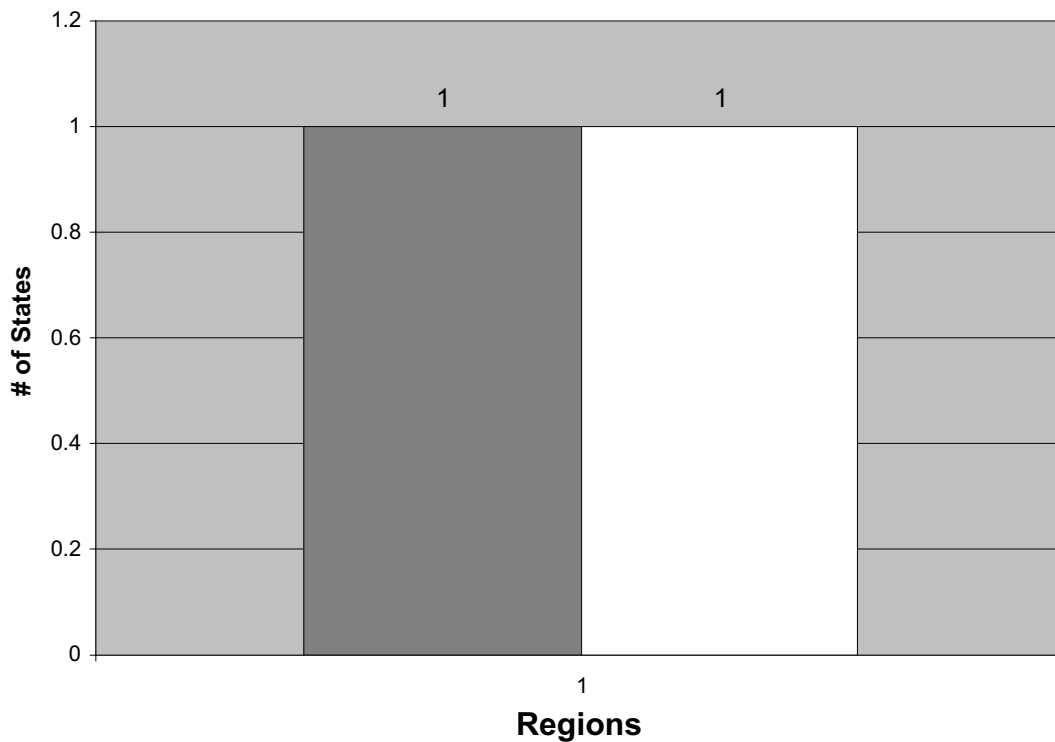
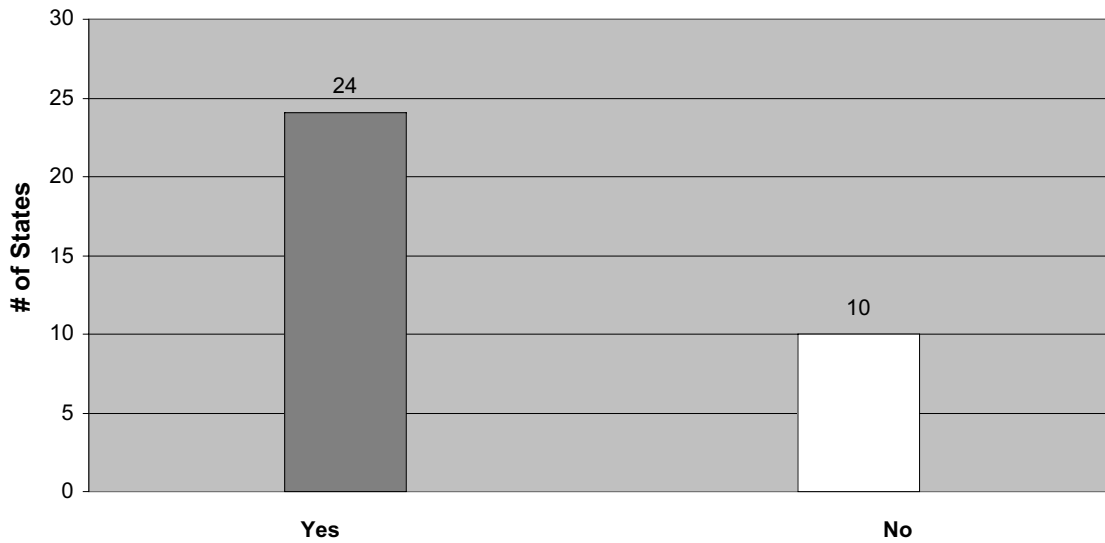
The final question on the survey asked the states to approximate the amount of time spent weekly on Legal Services Developer duties. The answers were extremely spread out. Six of the 34 respondents said that they spent 1%-4% of their week on Legal Service Developer Duties; 8 said they spent 5-24%; 9 said they spent 25-49%; and 7 said they spent 50-74%. Of all 34 states responding to this survey, only four states said

they spend between seventy-five and one-hundred percent of their time focusing on their Legal Services Developer duties.

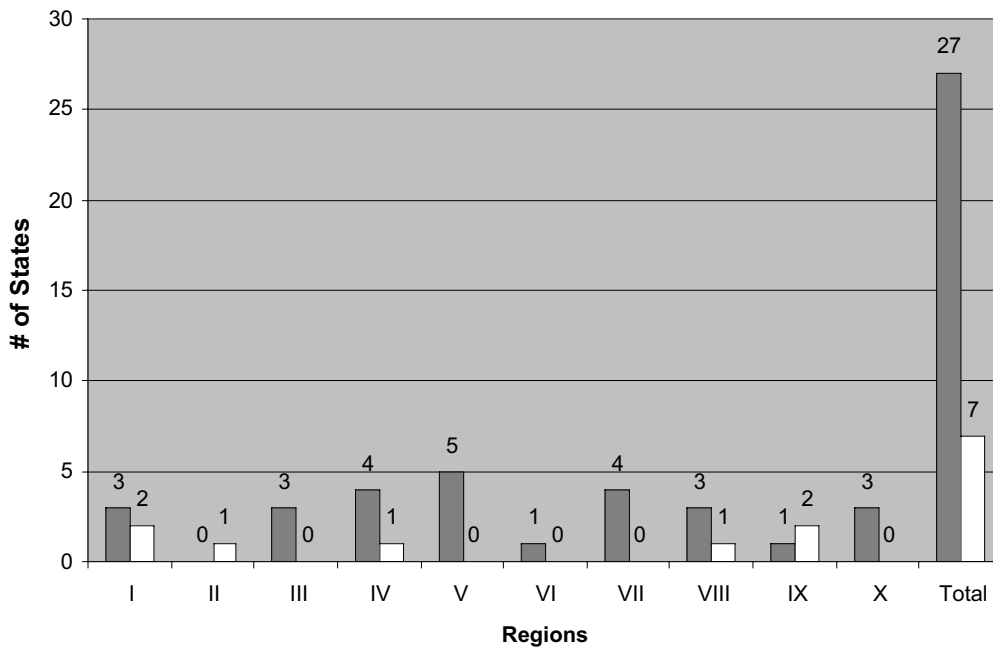
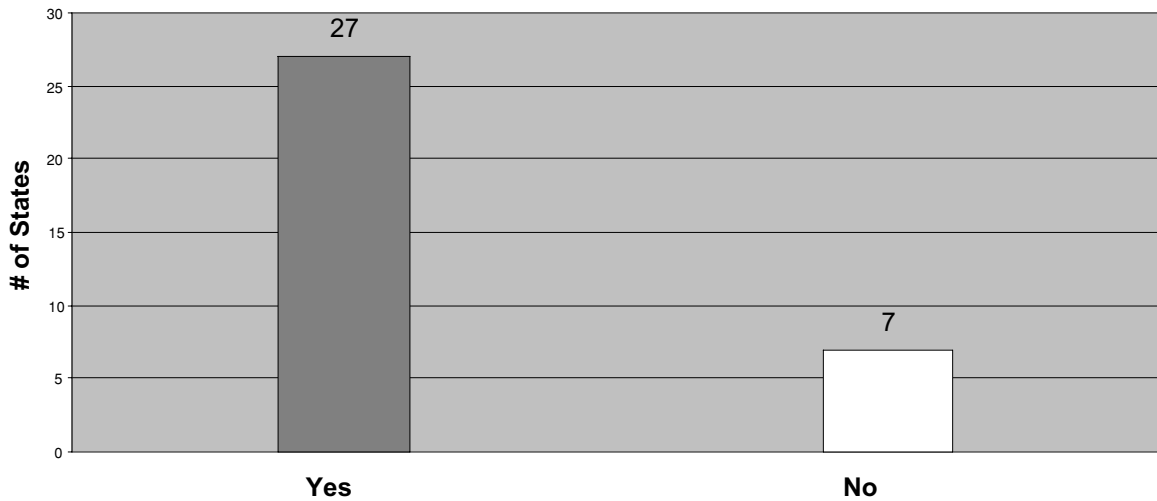
When the survey responses were broken down by geographically by region, the answers showed no blatant trends. Most of the responses differed state by state, rather than regionally. In other words, New Hampshire was just as likely to have similar practices to Kansas, as it was to Vermont. There also was no correlation between the time that the respondent spent on Legal Services Developer duties and the number of affirmative answers.

The mini-survey provided developers an opportunity to conduct a quick program self-assessment of structure. Just reviewing these results may lead readers to wrongfully assume that there is much consistency and stability within the program. Nothing could be further from the truth.

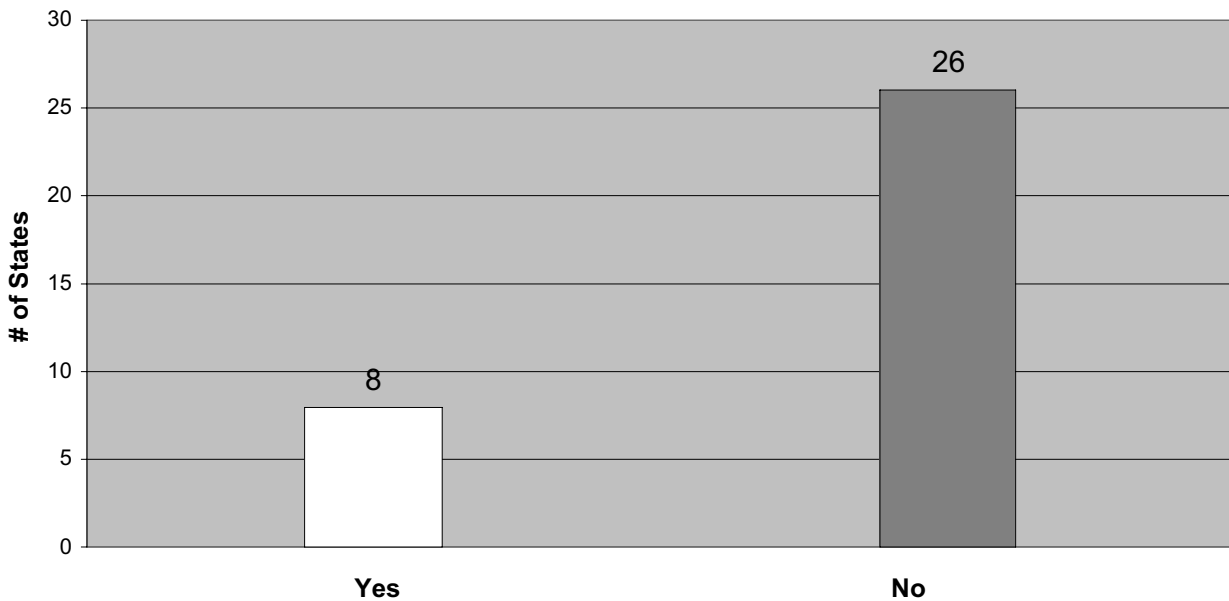
Are programs for Ombudsman, Prevention of Elder Abuse, Neglect and Exploitation and Legal Services Development housed in your state unit on aging or the aging services division of your state government?



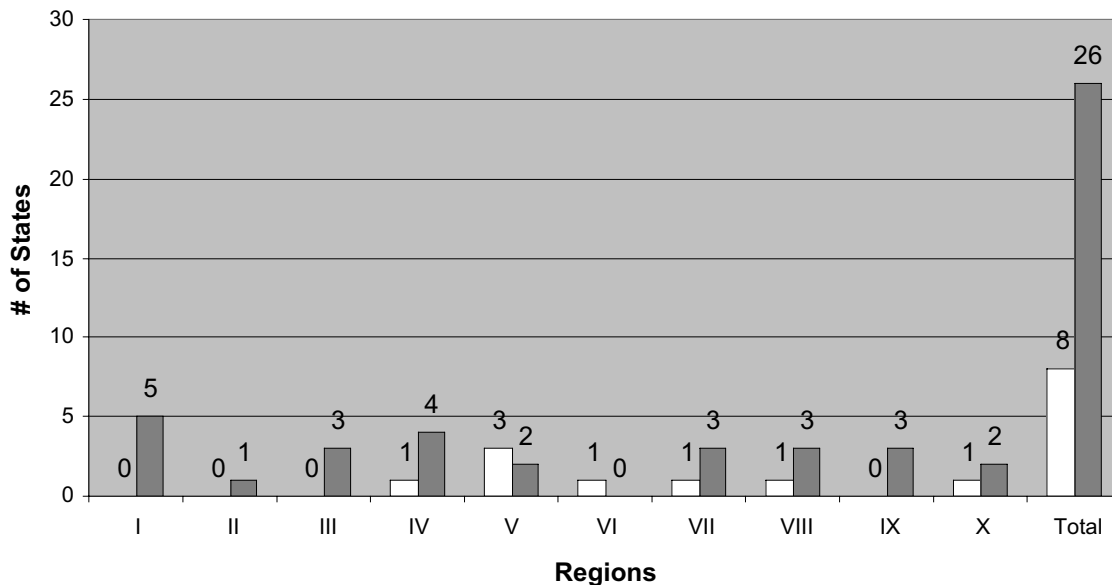
Do these programs regularly work together in your state?



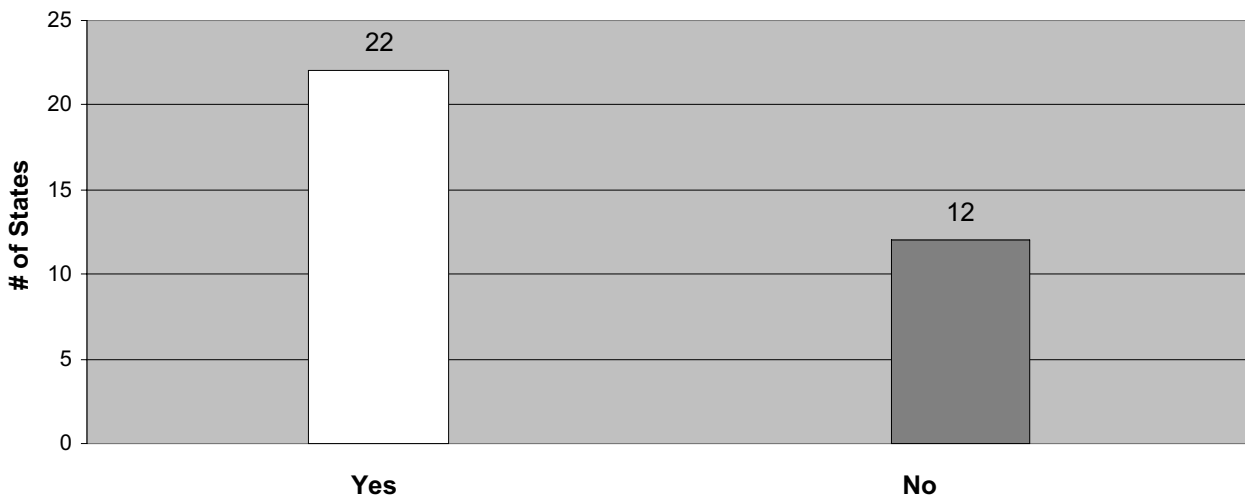
Does the head of any program supervise the heads of any of the other programs?



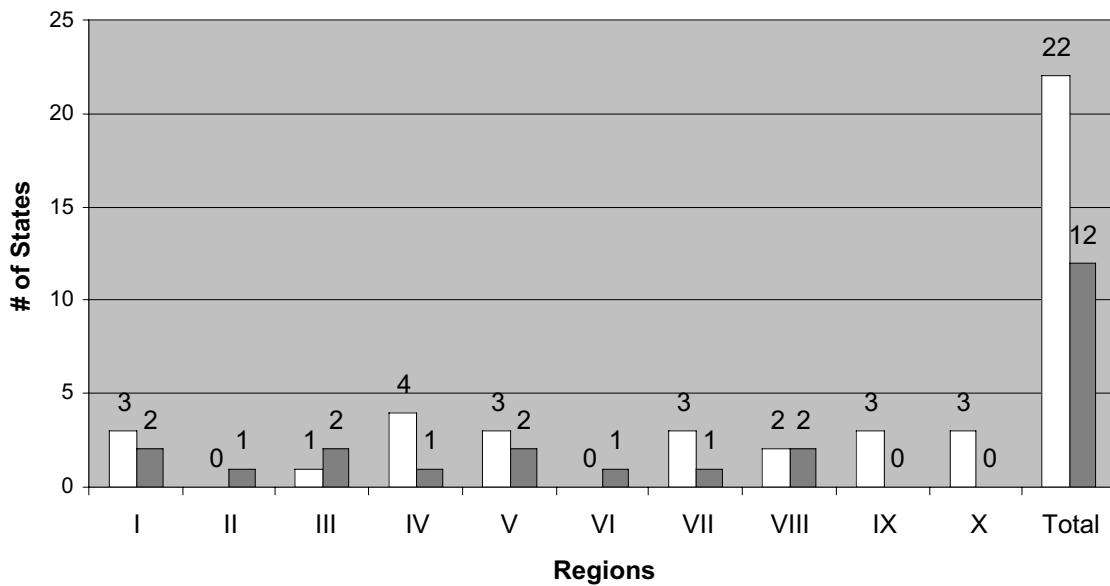
□ Yes
■ No



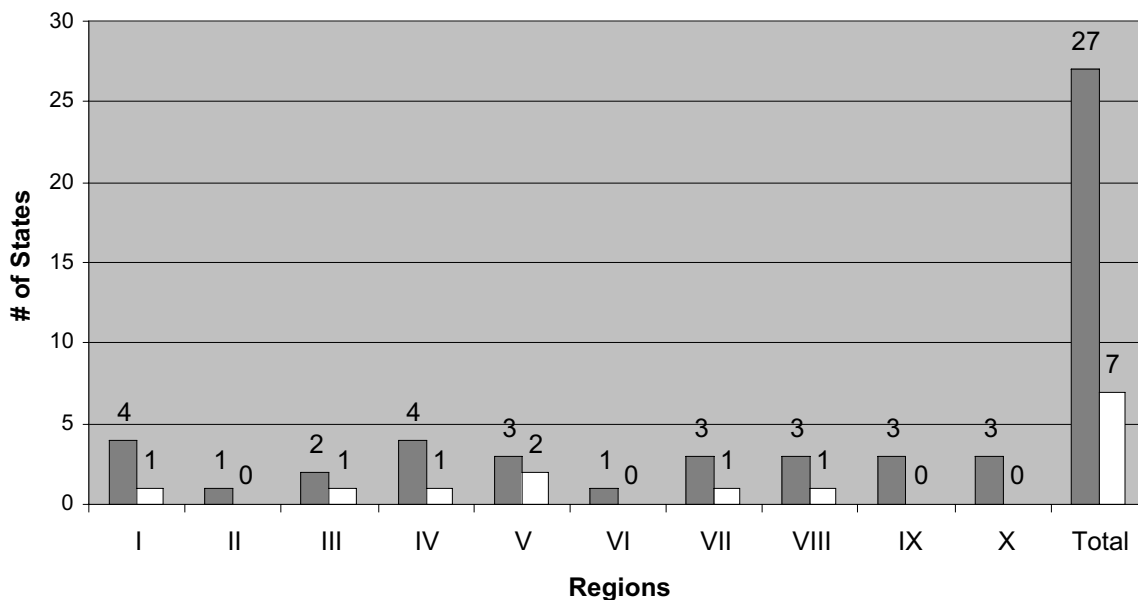
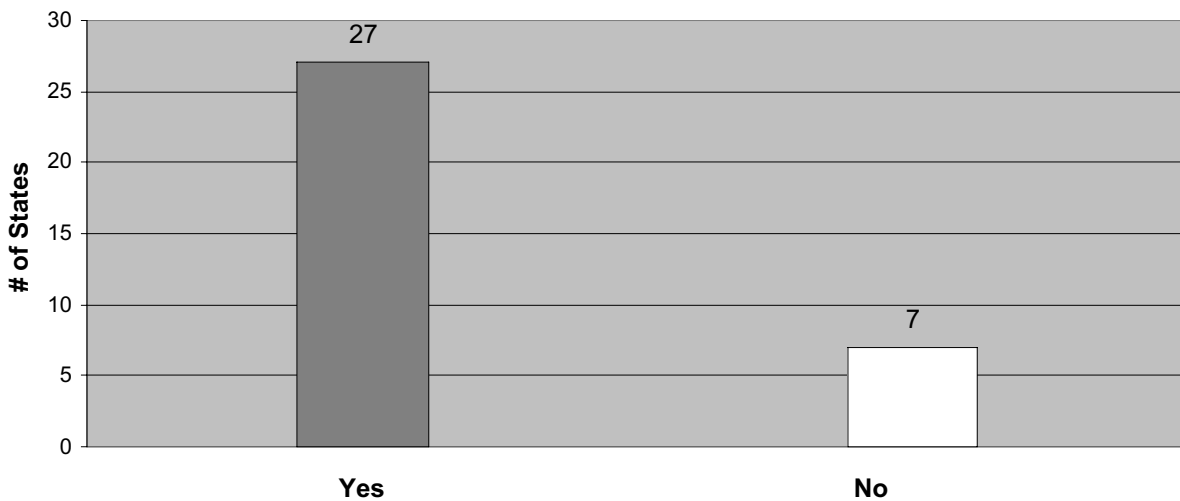
Do you work with aging, advocacy groups, such as the Silver-Haired Legislature, to craft and advocate for state legislation affecting the lives of vulnerable adults?



□ Yes
■ No



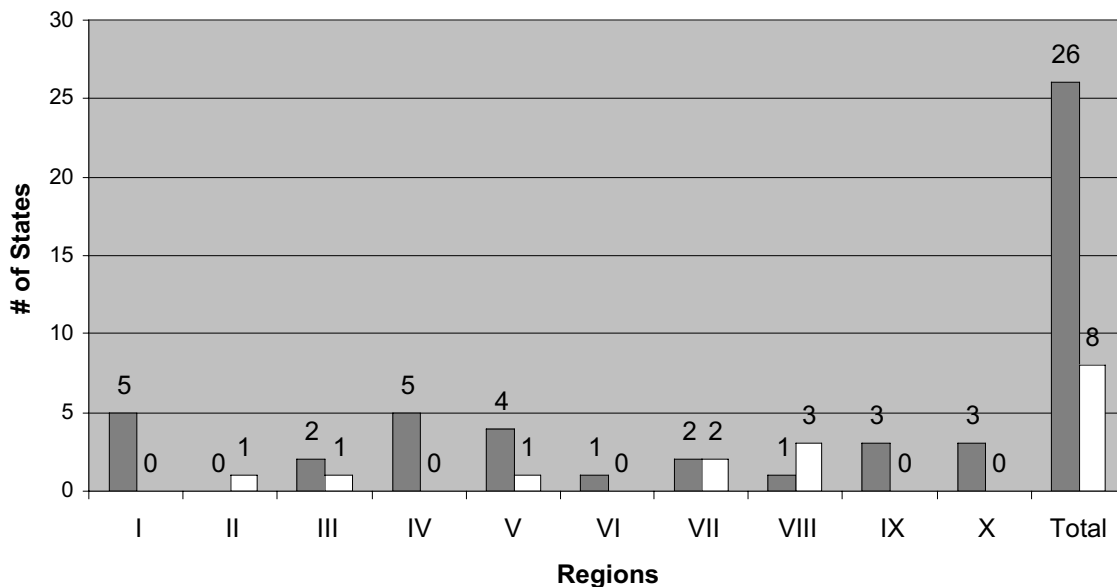
Does your office serve as a focal point for leadership on elder rights policy review, analysis, advocacy and legal issues for the vulnerable elderly at the state level?



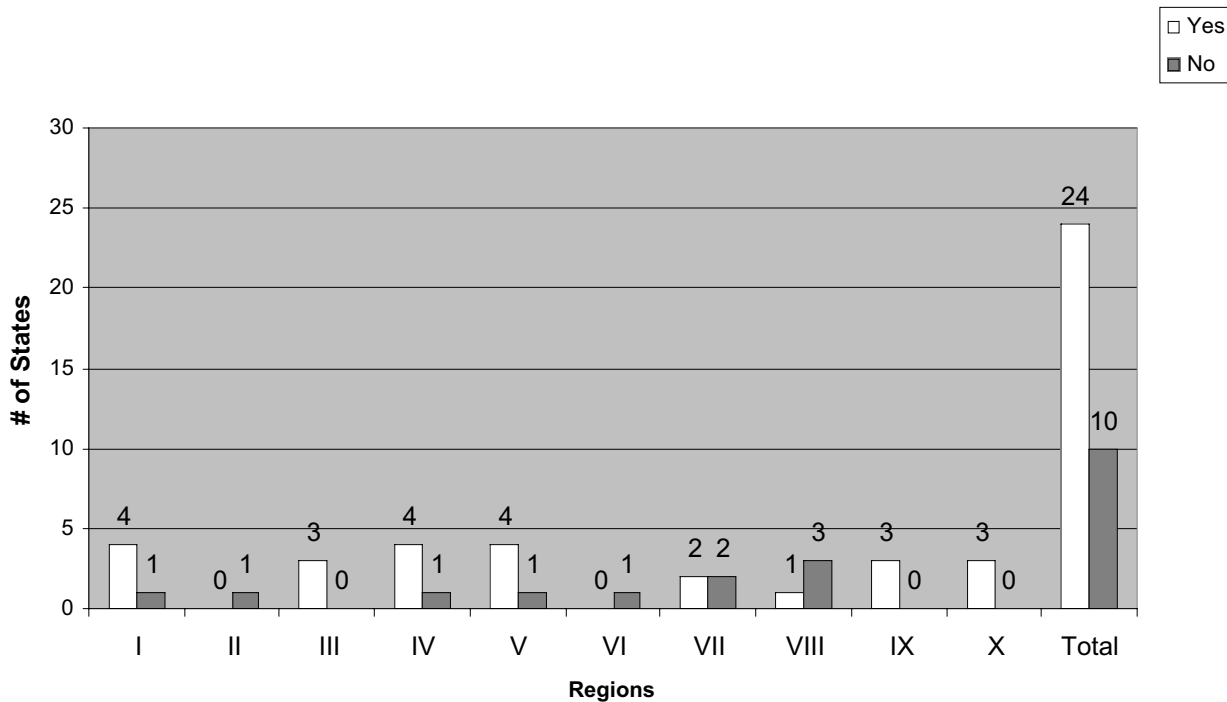
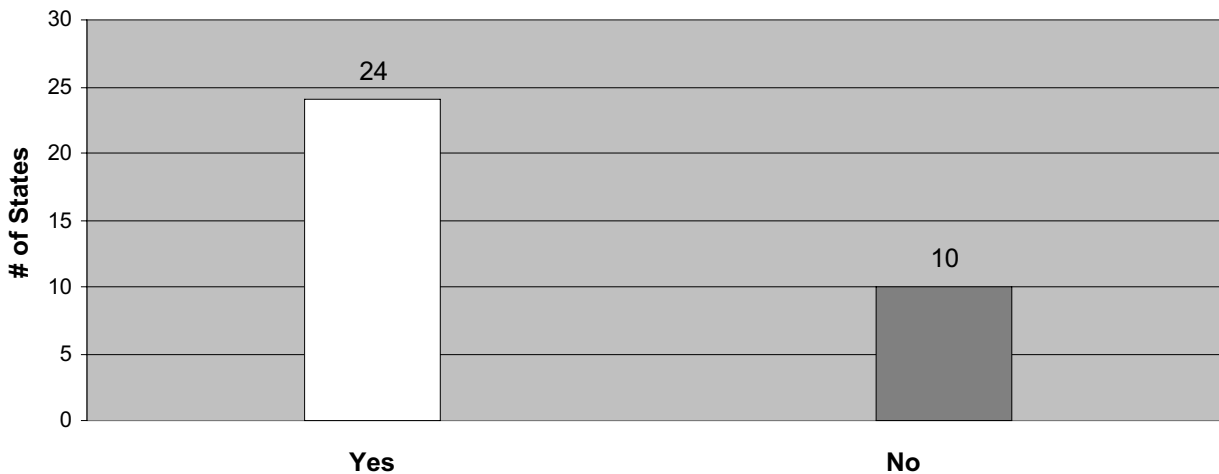
Do you enjoy, either in practice or by authority of your job description, the capacity and freedom to analyze, comment on, monitor and develop federal, state and local laws, rules and regulations?



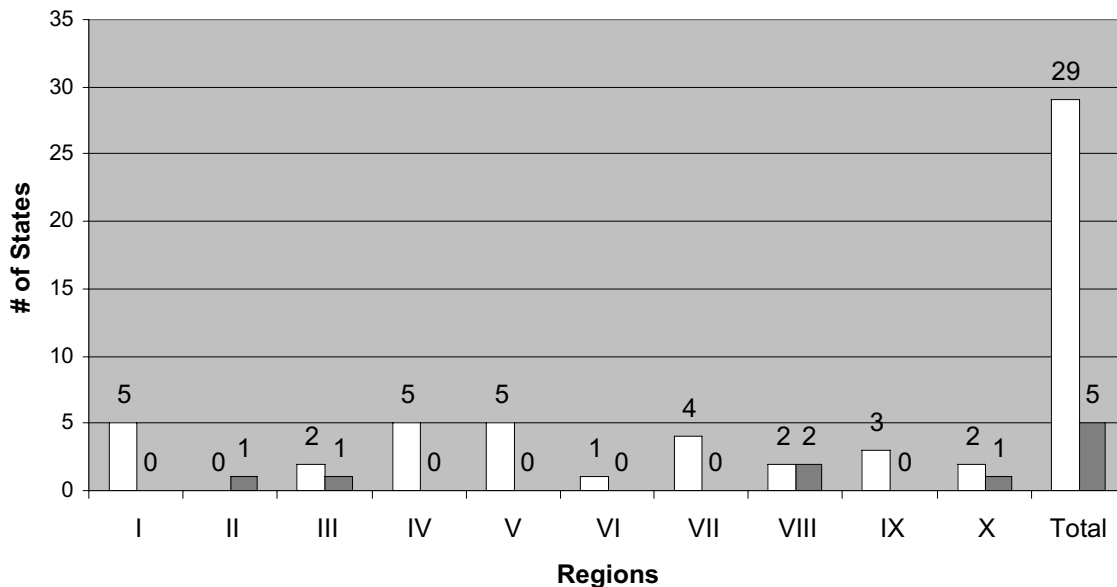
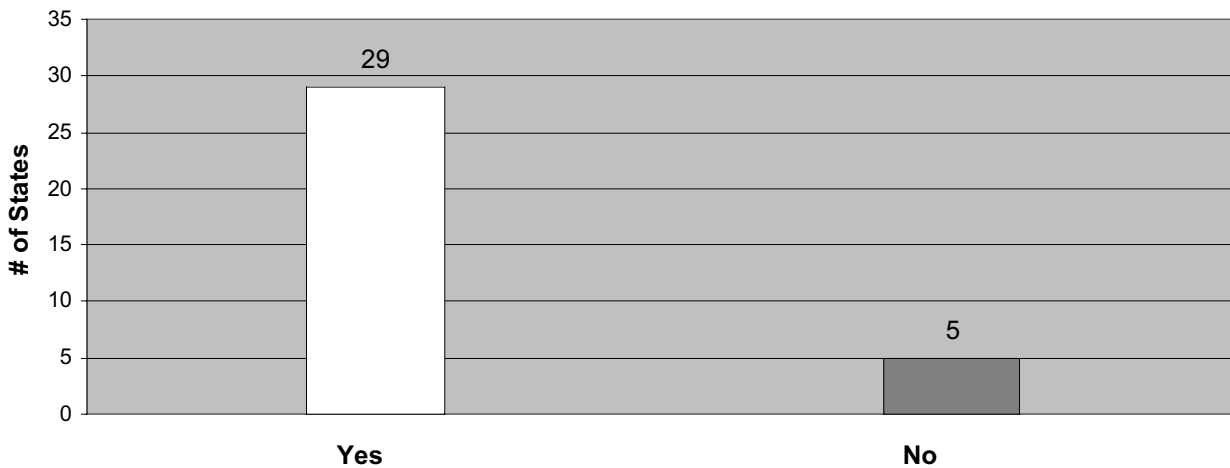
■ Yes
□ No



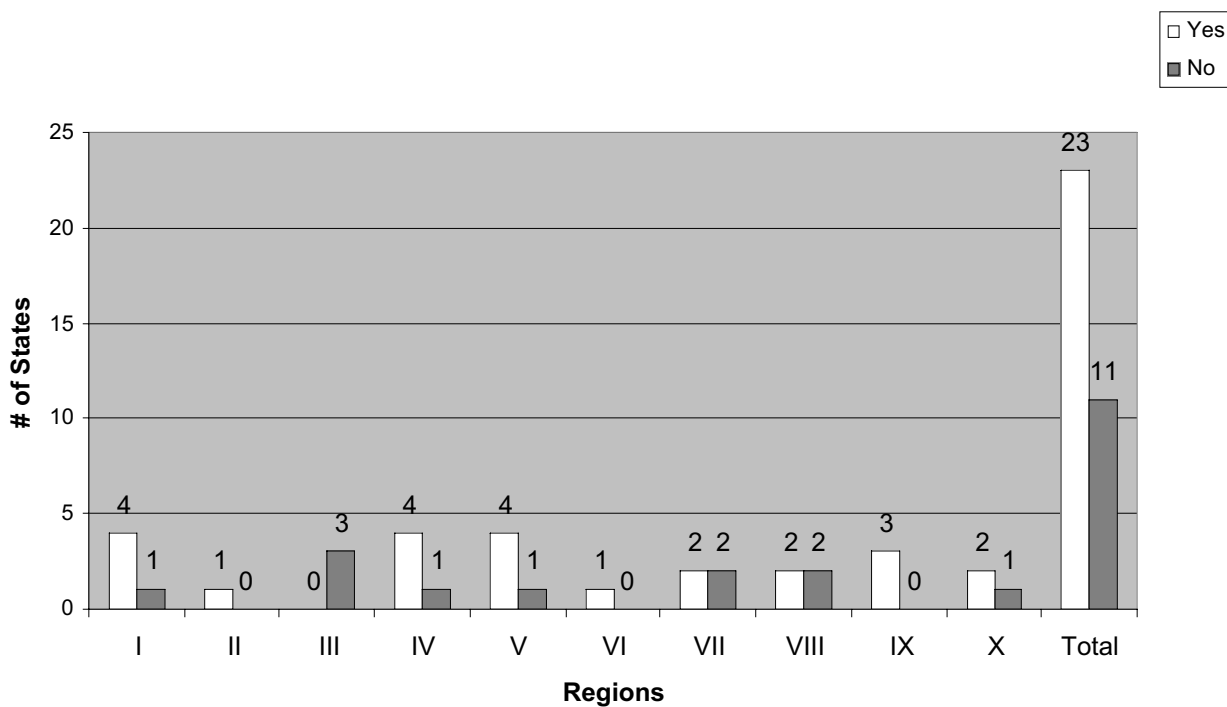
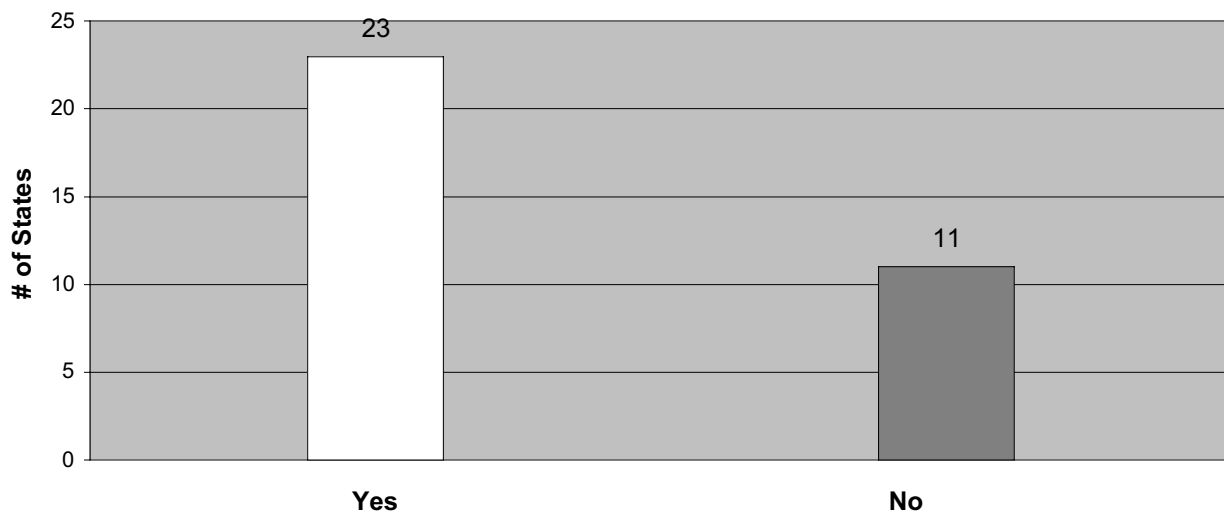
Do you enjoy, either in practice or by authority of your job description, the capacity and freedom to promote (advocate for) federal, state and local laws, rules and regulations serving the vulnerable elderly?



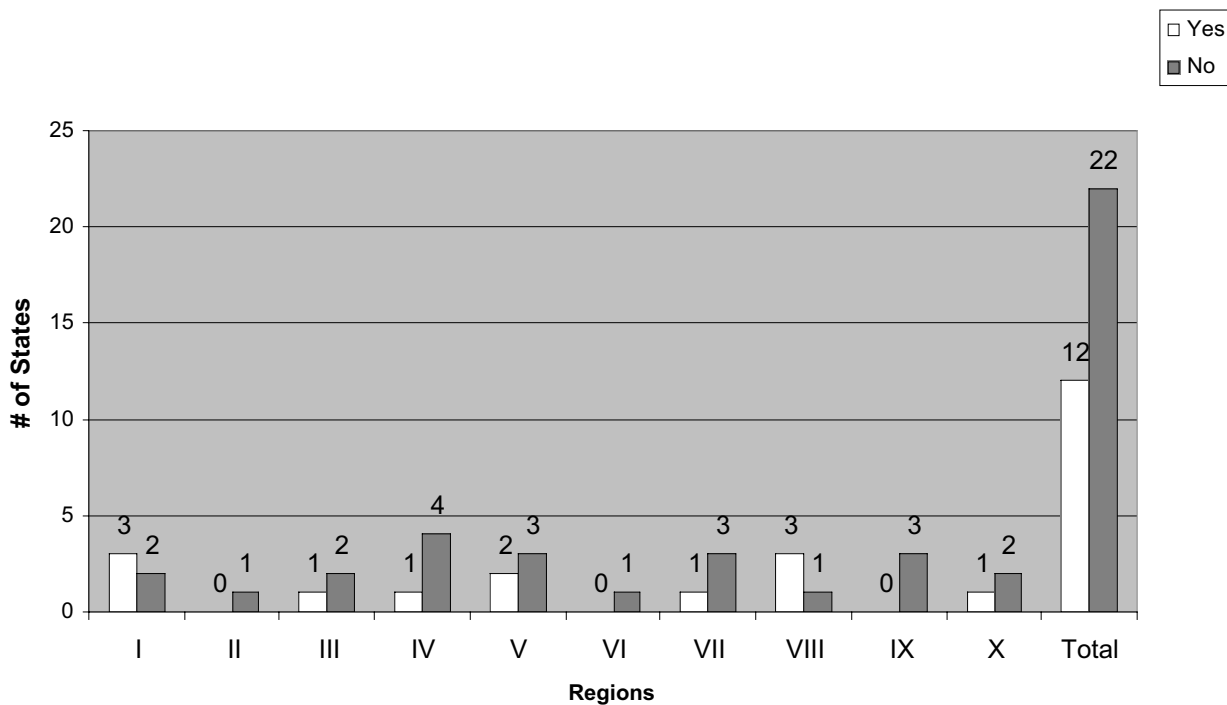
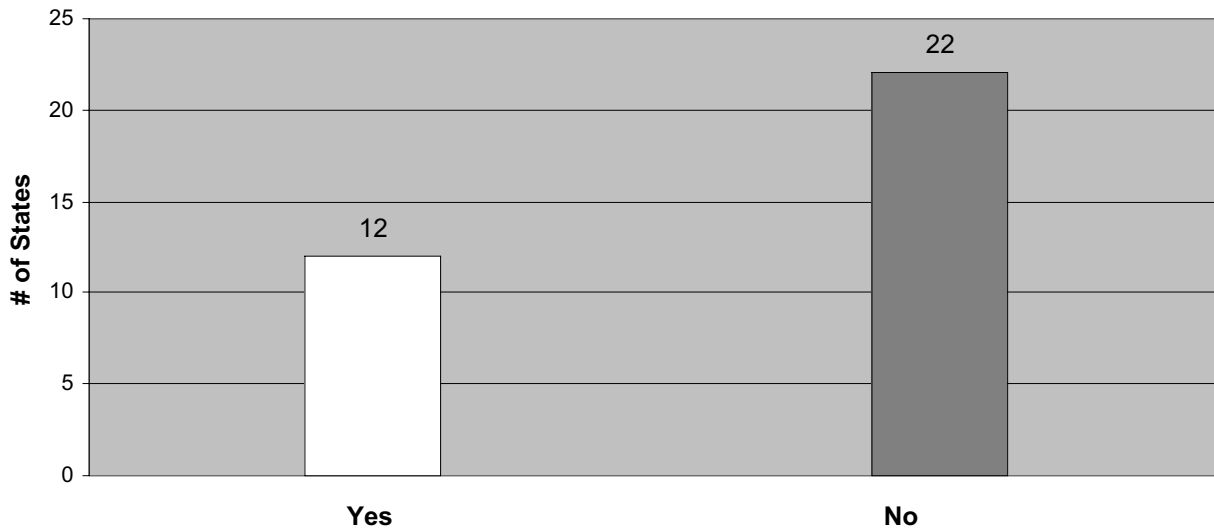
Do you enjoy, either in practice or by authority of your job description, the capacity and freedom to provide such information as necessary to public and private agencies, legislators and other persons regarding issues affecting the vulnerable elderly?



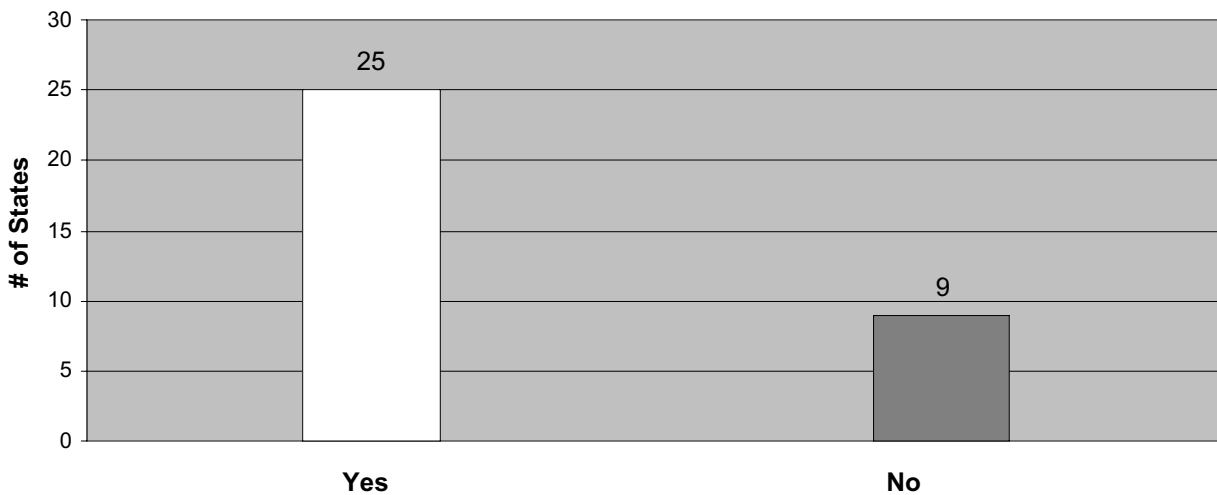
Do you regularly speak to interested groups on elder rights topics?



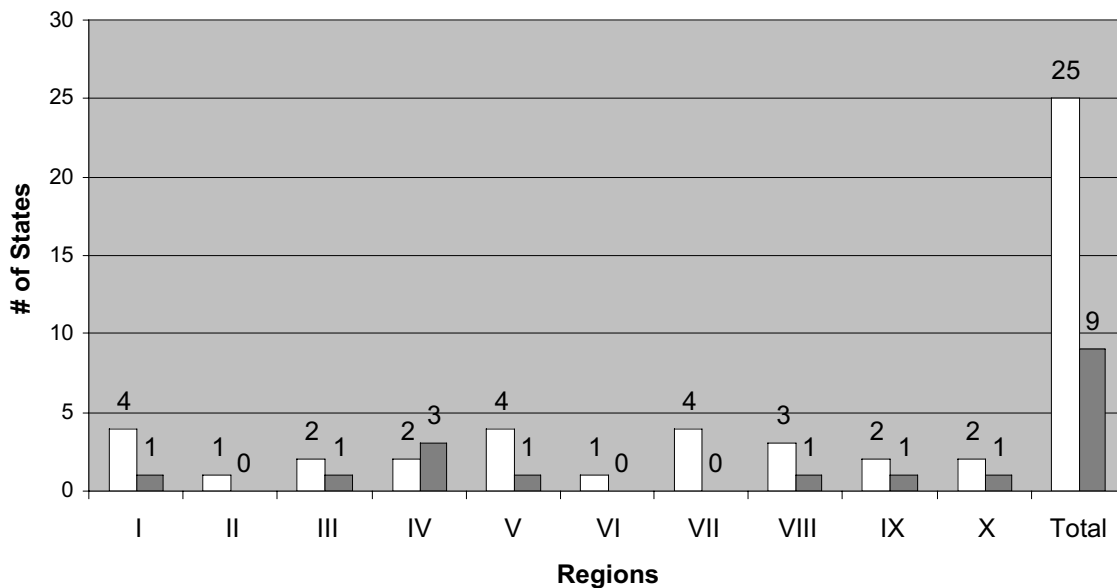
Are you engaged in selecting or assisting SUAs/AAAs with selecting Title III B legal provider contracts in your state?



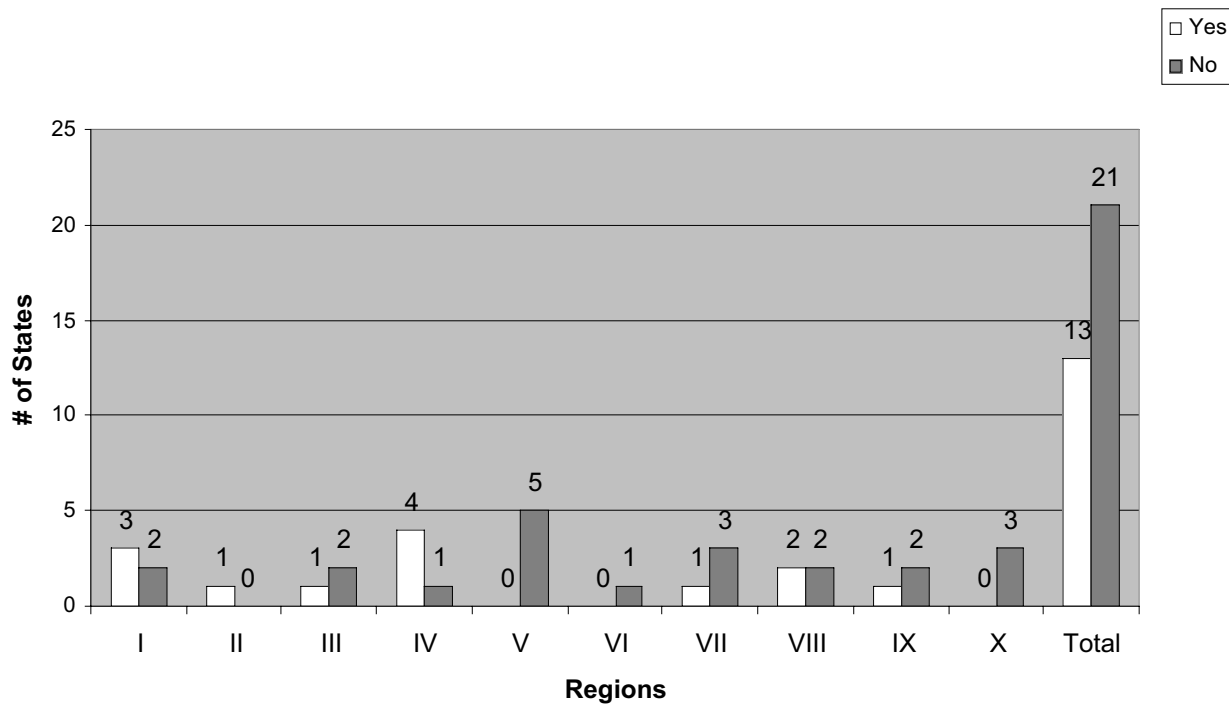
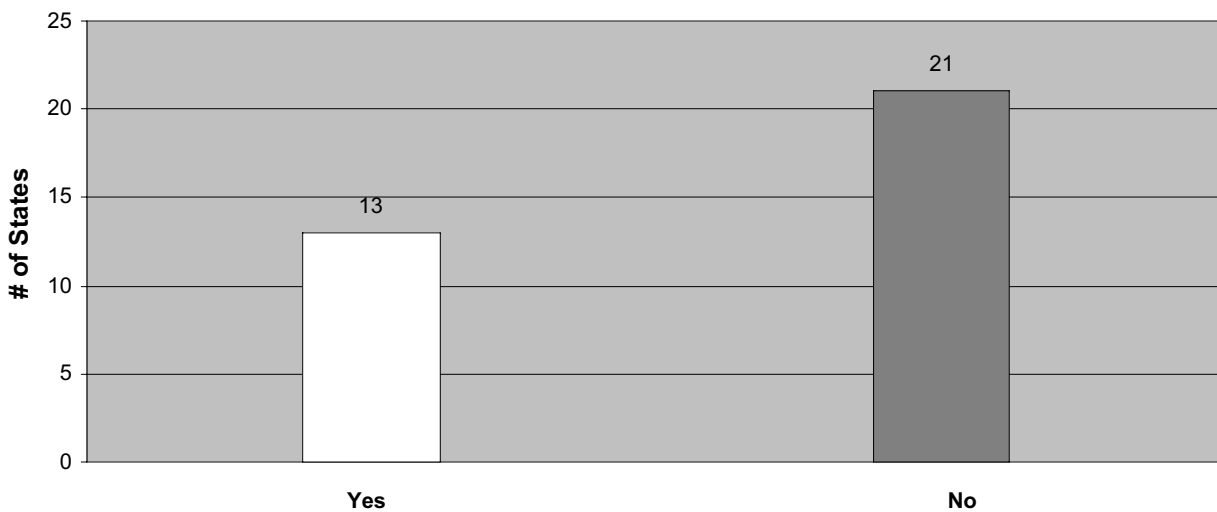
Are you engaged in contacting T.3 B legal providers directly to provide information, technical assistance and/or training in your state?



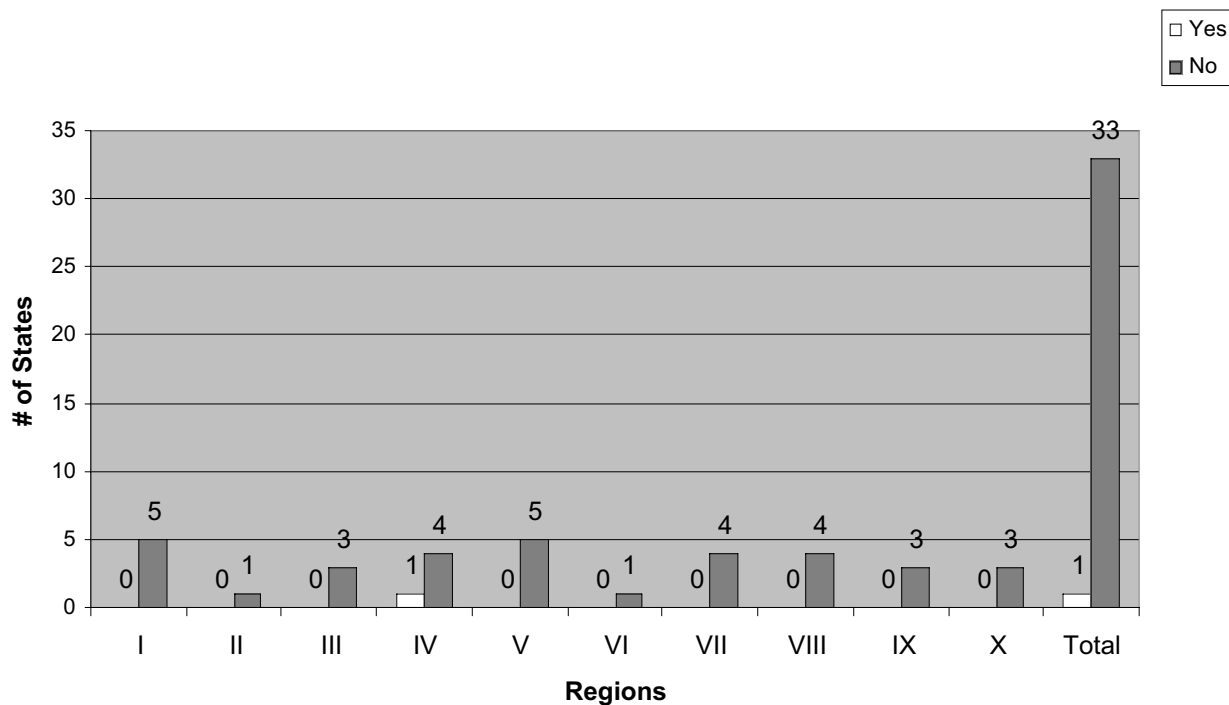
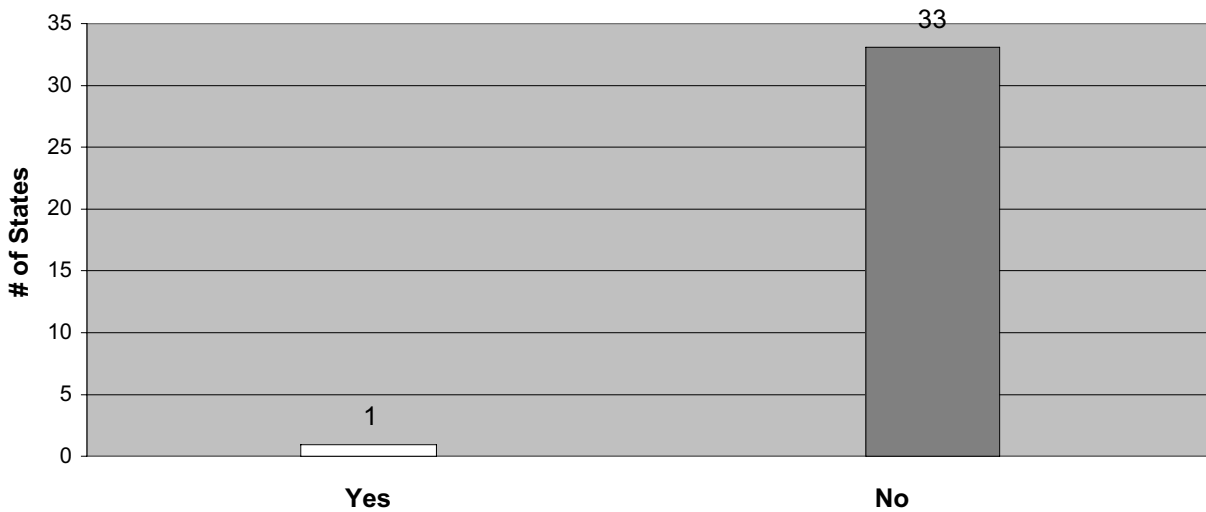
□ Yes
■ No



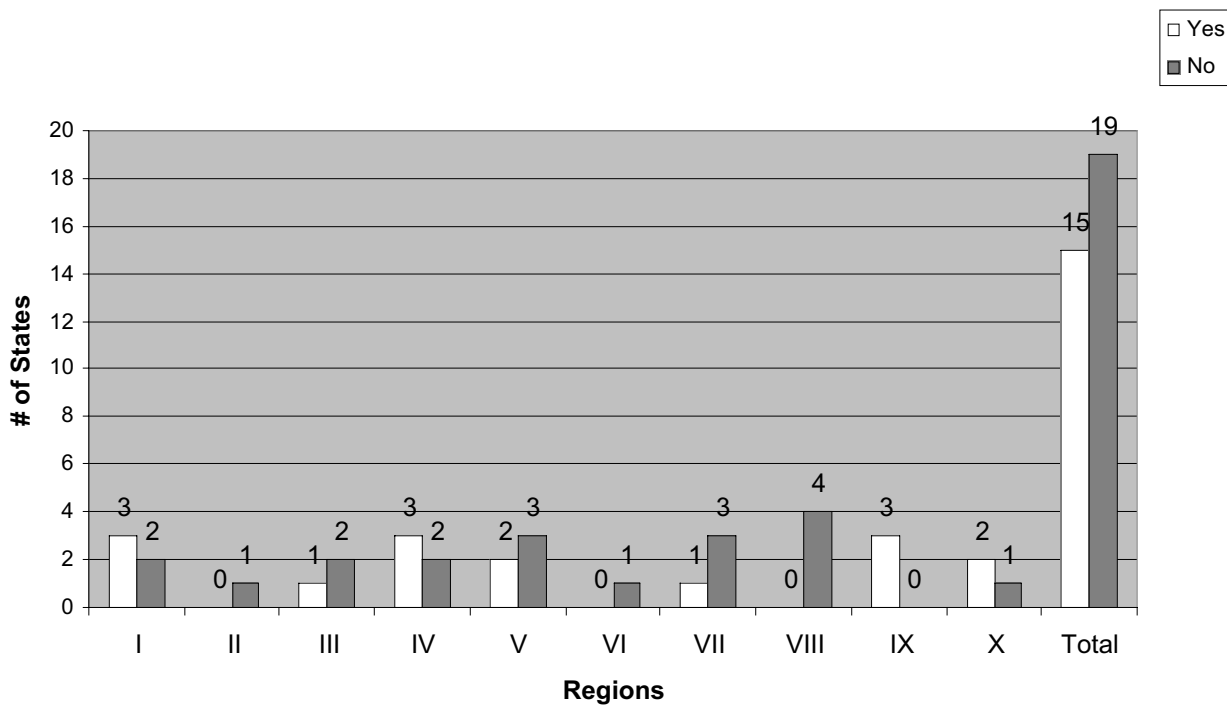
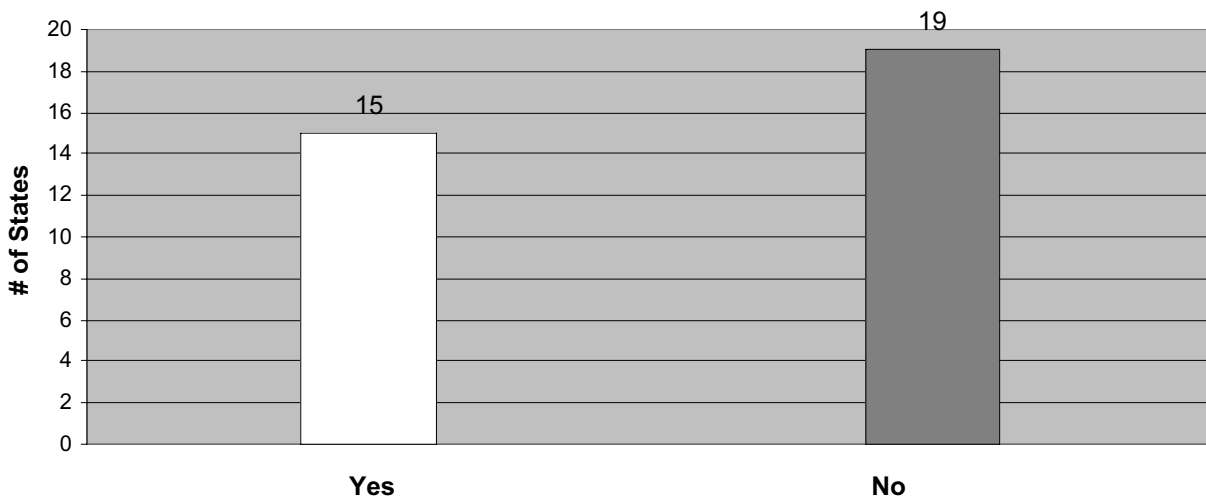
Are you engaged in providing representation for the SUA or the agency in which you are housed for your state?



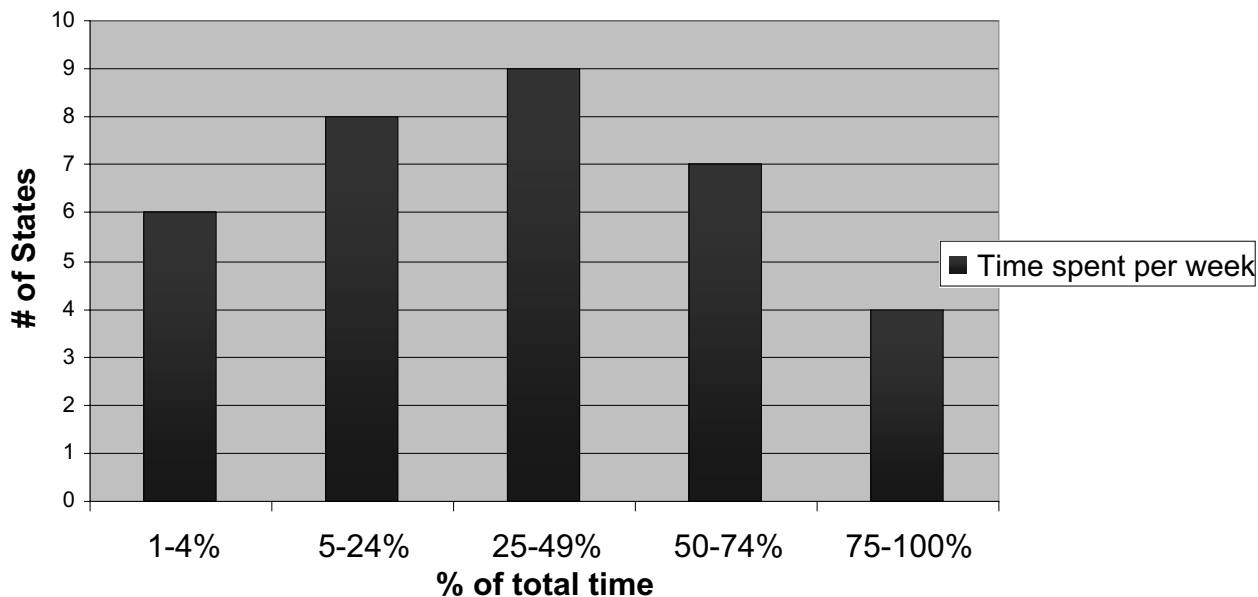
Are you engaged in providing legal representation to T.3 B clients in your state?



Do you organize or participate in activities at the state capitol designed to promote interest in state government and senior issues such as Senior Day at the Capitol?



What is the average amount of time that you spend per week on Legal Services Developer duties?



If for no other reason, the answers to this one question required us to delve deeper to find out what kind of legal assistance development was taking place when only four (4) of thirty-four (34) developers spend at least 75% of their time functioning as a legal services developer.

PHASE II

In-Depth Survey

The second phase of the State Legal Assistance Development Program Study Grant took the form of an in-depth written survey. The purpose of the survey was to help reveal some of the systemic and institutional barriers that are currently impeding or, in some way, retarding the progress of the Legal Assistance Development Programs of States. The survey results might also yield some insight into the differences in structures that states use to organize their legal assistance development programs and, therefore, might provide a basis for comparison of effectiveness of models.

The thirty-four (34) respondents to the mini-survey were sent post cards (Appendix 1) to indicate whether or not they would be willing to participate in the in-depth survey once it was ready for dissemination. Seventeen (17) of the thirty-four (34) developers initially participating in the survey, submitted their response cards. These are the options and the number of developers selecting each option:

- agree to complete the survey without any incentives— fourteen (14)
- will complete the survey only if done at a location away from the office
 - a weekend retreat with other developers —one (1)
 - an expense paid night at a hotel in their city—one (1)
- not willing to complete the survey, do not send—one (1)

As a result, surveys were sent to 17 developers. These are the results.

Key to Reading the Results

X = negative response

Y = affirmative response




ND = No details were provided for this element

NR = No response was provided for this element

NA = Not applicable/Not available

Contracting and Contract Management

LSD Involvement In the Process to Contract

STATE	RFP PROCESS	TA in Provider Selection	Review of Proposals	Authority to Approve/Disapprove Provider
AL	X	X	X	X
HI		ONCE	X	X
ID	X	ONLY UPON SPECIAL REQUEST	X ONLY IF GRIEVANCE FILED	ONLY IF THEY ARE UNABLE TO PROVIDE SERVICE
IA	X	X	X	X
NV	X	X	X	X
NY	X	X	ONLY IF REQUESTED BY AAAs	X Can only suggest alternative and recommend w/h funds
NC	X	X	X	X
PA	X	X	X	X
UT	X		X	X Not absolute but can strongly influence
WV	*	*	*	*
WI		X	X	X*

WV – One AAA is the lead agency for securing legal assistance for all four AAAs. There is one provider for the state and the contract with this provider covers all the state. The process was in place prior to this LSD’s tenure; however, the LSD would have input in this process and the SUA would have the authority to approve or oppose providers.

WI- The vast majority of OAA funded legal services are provided by lay advocates who are trained, supervised and advised by regionally based elder law attorneys. AAAs contract for the program attorney services and the third layer—county/tribal agencies contract for the lay advocates.

Observations

A number of developers revealed that they inherited their state's current T.3 B legal providers. Sometimes the providers have been in place for 5 -10 years or more. Without express authorizing language in the OAA, developers have no authority or real mechanism for removing providers who fail to meet the legal needs of the targeted population, particularly if there are no Standards or Guidelines in place for providing services. Developers are then relegated to making suggestions or


recommendations and hoping that the SUA and/or AAA will consider the concerns noted.

The sentiment of many developers is that many times contracts for Title III B legal services providers have no competition because 1) they are typically funded so low that attorneys, law firms and legal aid offices fear it would cost more than they would gain to have the contract and 2) previous providers have been in place for so many years, competitors feel it would be a waste of time to make an attempt to bid on the contract. If very little money comes from OAA funding, the influence of the SUA is going to be

marginal at best. If the SUA only requires the basics of the OAA, it would then be up to the AAA to place any additional quality requirements into the provider's contract.

Funding for Title IIIB Legal Provider

HI- funds are exhausted before the year’s end. There is then an inability to service one PSA for one to two months per year. The provider can continue to serve only those

STATE	MINIMUM FUNDING	LSD INVOLVEMENT	WAIVER PROCESS	AAAs BELOW FUNDING LEVEL
AL	6.7%	NR	NR	NR
HI	ND	X*	NR	0*
ID	3%	X*	X	0
IA	3%	X*	X	X most fund above 3%
NV	Programs get what they request	X*	NA	NA
NY	7%	X*	OAA process only w/public hearing	1
NC	2%	X*	X	1 of 17 usually and periodically another 1 or 2
PA	0%*	X*	X	0
UT	2%	X*	X	0
WV	0%*	X*	NA	NA
WI	5% (Avg spent is 12%)	X*		2 county aging agencies, 1 first time and the other 2 nd time

qualifying after meeting a means test. The SUA has minimal contact with AAAs and is reluctant to intervene in contracting with a provider for the delivery of additional legal services

NV – has no AAAs. The SUA contracts with providers directly. The two T.3B legal providers for the state receive \$98,000 and \$100,000.

NC – In the past there was a proposal to take some of the state match legal services money as a budget remedy.

PA – AAAs have to spend some percentage of block grant money on the provision of legal services but it depends upon the demand of need and supply of providers.

UT – The minimum percent is low enough that no AAA has ever fallen below or asked for a waiver.

Termination of a T.3 B Legal Provider

State	Contracts Terminated Since Tenure	Length of Time Areas w/o Provider	LSD Involved In the Process	Transition Procedure in Place
AL	0	NA	NA	☯
HI	0	NA	NA	X
ID	0	NA	NA	X
IA	0	NA	NA	X AAAs have had the same providers since money became available for legal services
NV	0	NA	Would expect to be responsible for every aspect of the change should one occur	X
NY	0	1 currently and others voluntarily may discontinue services	X	X
NC	0	*	X	X
PA	UNKNOWN	NA	NA	Local decision, local planning, so procedure would vary by agency
UT	0	1 was without for 2 nonconsecutive years*	X	X
WV	0	NA	NA	☯
WI	0	NA	NA	None specific to legal but general ones exist and require compliance with legal policies

NC- a number of AAAs' contracts for legal services only cover some of their counties. There are counties within the state of NC for whom Title IIIB legal services is not available. The SUA allows no coverage of counties as long as the AAA maintains the 2% minimum funding level.

PA – This is outside the scope of my responsibility. If any contracts were terminated, it was determined by the AAAs and was their decision.

UT- The SUA withheld OAA funds until the AAA contracted for legal services.

TRAINING and TECHNICAL ASSISTANCE

Training is provided to T.3 B legal providers

State	Nature of Training
AL	Quarterly trainings for providers and AAA directors on things such as nursing home contracts, mediation, housing and targeting. Joint trainings have been held between legal and ombudsman.
HI	Last training held 2 years ago. Topics covered included: A physician's perspective on issues of competency in working with elders; targeting limited resources to those in greatest social and economic need without means testing; choosing case priorities proactively; legal education, brief services, direct representation and/or impact work; conducting outreach effectively.
ID	No formal training
IA	Over the years several substantive trainings have been provided for T.3 B providers and AAA staff who work with the providers. There has been collaboration and co-sponsored trainings w/LSC for AARP NTP trainings. Some kind is offered annually. It's been 5 or 6 years since an annual legal providers training. The first Elder Rights Conference is in October 2003 for the SUA.
NV	NONE
NY	Sporadically by the SUA
NC	No training opportunities provided by the LSD specifically for T.3 B legal providers because there is no budget or funding for this. The LSD trains the new ombudsman on legal issues and regularly does pieces of the quarterly ombudsman training.
PA	Legal services providers receive training on various subjects at the AAA level. The state bar offers training and whenever the SUA holds a training, providers are invited.
UT	Utah has almost exclusively one T.3 B provider and the SUA and LSD do not have established training procedures.
WV	The LSD secured funding from the SUA for the provider's Executive Director to attend national training conferences.
WI	Two conferences and a benefits specialist conference. Legal backup provider agency trains the benefits specialists.

Technical assistance is provided to

State	T.3 B Legal Providers	AAAs	SLTCOP	Elder Abuse	Aging Network
AL	NR	NR	NR	NR	NR
HI	TA visit made to each a year ago	X	X	X	X
ID	TA was provided on the legal program	X	☯	APS is the elder abuse provider and the LSD is the APS coordinator	X
IA	Answers questions and requests to simplify process w/AAAs, provides updates	Provides options for legal providers even though change is unlikely	Answers POA/ Guardianship Questions; assists with referrals and provides trainings for local LTCO	For years, LSD was the staff person, now LSD sets up training for APS	☯
NV	X	NR	TA provided to SLTCOP on legal issues and helps when they are subpoenaed or have a guardianship question	Same as with SLTCOP	25% of time spent on training and TA to aging network professionals and non-aging network professions (law enforcement) about recognizing elder abuse and NV's elder abuse laws
NY	TA on specific legal issues	TA on formulating RFPs and various types of providers	X	X	X
NC	X	Monitoring issues/ Standards	☯	X	X
PA	Would if requested	Others in SUA provide	SLTCOP conducts their own program but would if asked	Provided by a separate program but would if asked	X
UT	☯	☯	☯	☯	☯
WV	☯	X	X	X	☯
WI	☯	X	X	X	☯

MONITORING, SITE VISITS, QUALITY ASSURANCE

Monitoring

State	Monitoring Tool	Frequency	Staff Involved	What Monitoring Involves
AL	Desk Review Self-Assessment	Annual Evaluation and on-going reviews	ND	Annual evaluation that includes the legal program
HI	NR	NR	NR	NR
ID	* AAA developed	AAA desk review quarterly and Bi-annual on-site	SUA does not monitor legal provider	Desk review and on-site by AAA
IA	Similar to GA's	12-18 months unless there are problems	LSD	Visits w/ AAA staff that monitor legal; In-depth visits scheduled
NV	None	Minimum of every 2 years	LSD	Reviewing random case files, interviewing employees, and Mg Atty to make sure grant requirements are met.
NY	None, but attempts have been made to develop one	X	X	X
NC	Self Assessment Tool	Once a year for the AAAs	AAAs monitor legal every 2-3 years	AAAs monitor the provider and LSD reviews the report
PA	<u>"Monitoring of</u>	<u>providers is the responsi</u>	<u>bility of the AAAs."</u>	
UT	Nothing formal	Once a year	LSD	Current process based on personal relationships; the previous LSD was part-time and an attorney with the provider
WV	No aspect of monitoring is particular to legal	Every 2 years all county senior projects are peer monitored	The lead AAA has a team	Reviews Bd. of Dir.; program policies regarding employment, and other issues and fiscal integrity
WI	Surveys and on- site reviews	Annual	Supervising attorney for benefits specialist and AAA for legal provider	Review of case records and use of standard protocol

ID- The SUA is currently performing a program development review of the statewide legal programs to determine performance quality and need for changes/modifications.

Site Visits

State	Reasons for Visits
AL	Performed in conjunction with T.3 B assessments
HI	NR
ID	By AAA only
IA	Visits are only for monitoring. Currently working on building better reporting, monitoring and assessment system
NV	Informal and constant. 1-2 months for one and 3-4 times a year for the other; a lot of collaboration on projects and cases
NY	Informal visits to ascertain whether they are hearing of new issues and to see what they need to do their jobs more efficiently.
NC	NONE
PA	NONE
UT	Always conducted by LSD to discuss issues of concern regarding contract; relationship with AAA; compliance with OAA/state regs; services provided as well as programmatic issues and ways to improve. An annual visit is made to the AAAs to establish a relationship and help them understand T.3 B legal assistance, priorities and the system generally
WV	Site visits are not conducted.
WI	Annual AAA visits; Ad hoc visits by LSD to discuss a problem /issue.

Guidance to Title III.B Legal Providers

State	Standards/Policies & Procedures	Method of Development	Coverage	Enforcement
AL	Standards	Collaboration of LSD, providers, AAA Directors	ND	ND
HI	NR	NR	NR	NR
ID	AAA contract and OAA only	X	NR	AAA monitoring
IA	Was working on them until language in OAA changed; decision made that they were no longer necessary	Will use Standards developed with help of TCSG and workgroup and turn them into guidelines	Legal authority; who client is; priorities; mission; role and where to refer	Only violation of contract or RFP will be addressed by SUA
NV	Grant specifications	In place prior to tenure	General requirements; required services; prohibitions; documentation; operating procedures; quality improvement	ND
NY	Standards for the delivery of Legal Assistance to Older New Yorkers	Workgroup formed after the 1992 OAA amendments	Overview; responsibilities of SUA, LSD, AAAs & providers; guidance on selecting providers and criteria; coordination w/ LTCO	ND
NC	NC Division of Aging policy standards for legal services	ND	ND	ND
PA	SUA Aging Program Directive	ND	Goals, targeting, selection of providers; reporting requirements	ND
UT	No set guidance for T.3 B providers but questionnaire for AAAs (See APPENDIX 4)	X	X	X
WV	No specific guidance for providers except for definition for client tracking and reporting	NA	NA	NA
WI	Policies	Stakeholders committee for initial policies and LSD, providers and ad hoc committee for revisions	All aspects	ND

ADVOCACY ACTIVITIES

Advocacy Involvement

State	Permitted or Not	SHL	Advocates Coalition	Drafting Legislation	Reviewing Legislation	Analyzing/ Commenting on Legislation
AL	Only written materials and reports to legislature	NR	Extensive coordination among various advocacy groups	NR	NR	NR
HI	Acts as Governor's Legislative Coordinator	NR	Weekly meetings with community representatives	NR	☯	☯
ID	Lobbying prohibited	NA	Supportive of their efforts	☯	☯	☯
IA	Preferred that LSD not actually contact citizens about legislation or rules. NO lobbying unless registered.	X	Develops materials to share with private advocates for them to share with local legis	☯ Develops regulations	☯	☯
NV	Unrestricted	No longer under Aging but works upon request	☯	☯	☯	☯
NY	X	X	X	X	X	X
NC	Restricted w/o multi-layer approval process	X	X	X	X	X
PA	Not an area of concentration for this position	X	X	X	X	X
UT	Restricted	X	X	Upon request	Upon request	Upon request
WV	Permitted**	NR	NR	NR	NR	NR
WI	Not permitted	X	X	X	X	X

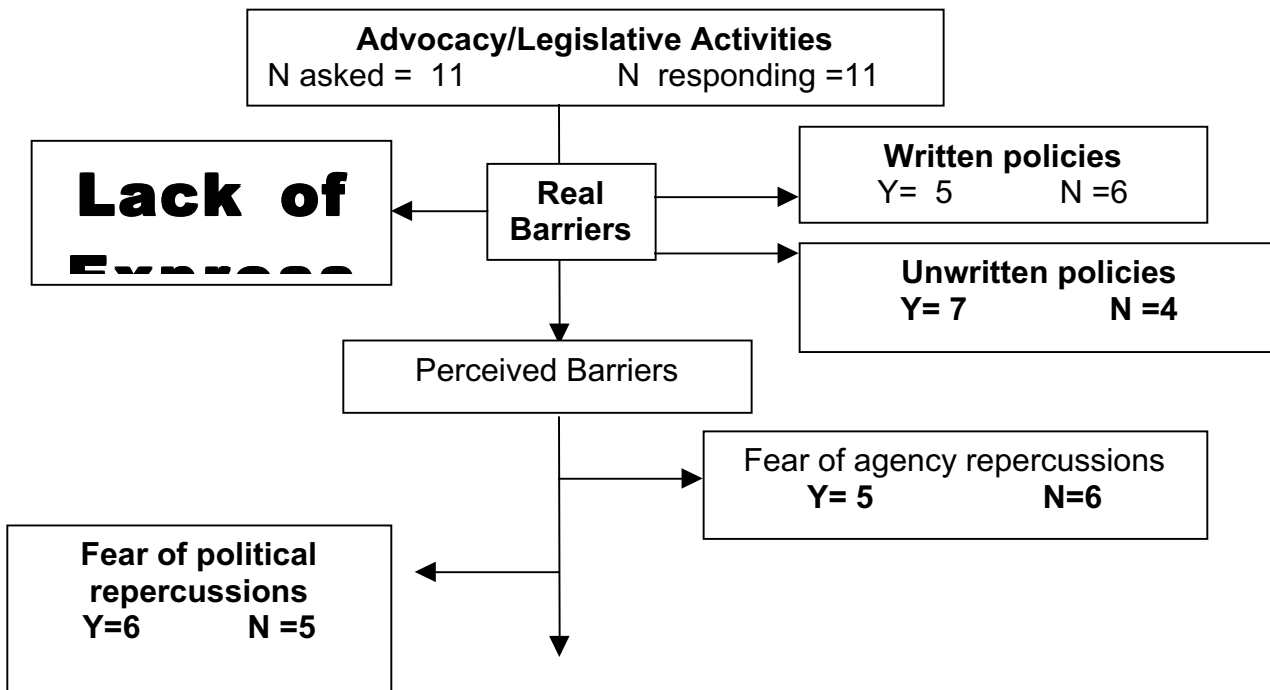
WV- During tenure as LSD there has been no occasion to utilize advocacy or become involved in legislative issues on behalf of the agency or legal issues.

ADVOCACY BARRIERS

There are barriers to advocacy efforts by Legal Services Developers that are not necessarily attributed to any particular developer.

- LSDs are frequently prohibited within their states from directly contacting members of the legislature or their staff, regardless of the issue.
- Responding to or commenting on policy issues/questions is generally forbidden without prior approval.
- Voicing legal opinions on pending and/or existing legislation are oftentimes strictly forbidden.
- Advocacy is frequently a function only of other SUA staff and AAAs without assistance or input from the LSD.

Reasons LSD Unable to Conduct Advocacy Activities



COMMUNITY EDUCATION and ISSUE WORK

Subject Areas Covered

State						
AL*	NR	NR	NR	NR	NR	NR
HI	NR	NR	NR	NR	NR	NR
ID	X	R	X	X	X	X
IA	✓	R	X	R	R	R
NV	R	R	X	X	X	X
NY*	X	X	X	X	X	X
NC	X	R	X	X	X	X
PA	X	X	X	X	X	X
UT	R	R	R	R	R	X
WV	5% time	as LSD	doesn't	leave	time for	this
WI	X	X	X	X	X	X
	Caregiving	Guardianship	Age Discrimination	Pension Health Ben. Counseling	Consumer Protection/Fraud	Housing

AL-Response indicated that these are required to be priorities for the local AAA. No mention of any work in these areas by the LSD.

HI- LSD only provided a sampling of CE and Issue topics.

NC- No budget for community education or issue work.

NY- CE efforts have been largely limited to a series of articles on Estate Planning Basics. Some CLE presentations on kinship care, elder law and law and technology.

WI- Education efforts limited. Information is provided to beneficiary specialist and aging network.

OBSERVATIONS

Legal services developers are sometimes able to speak to different groups upon special request but many times because they have no dedicated budget, their travel is restricted.

There is little distinction in whether travel is paid for with state or federal funds. The fear is that the public will think it frivolous for state employees to travel and, therefore, travel is severely limited.

COMMUNITY EDUCATION and ISSUE WORK (cont)

Subject Areas Covered

State						
AL	NR	NR	NR	NR	NR	✓
HI	NR	NR	✓	✓	NR	NR
ID	X	X	X	✓	X	X
IA	X	Medicaid Updates	LSD was EAP until recently	✓	Medicaid Updates	✓
NV	✓	X	✓	✓	X	X
NY	X	X	X	✓	X	✓
NC	X	X	X	✓	X	✓
PA	X	X	X	X	X	X
UT	✓	✓	✓	✓	✓	✓
WV	5% of time	as LSD	doesn't	leave	time for	This
WI	X	✓	X	X	✓	X
	Tobacco Settlement	Public Benefits	Elder Abuse Neglect/ Exploitation	End-of-life Surrogate Decision	Income Maintenance	Grandparents Raising Grandchildren

NV- Community Education takes approximately 25% of this LSD's time. In the area of elder abuse issues, the NV LSD is the hearing officer for the state in cases involving patients' loss of personal property in LTC facilities.

OBSERVATIONS

Frequently, LSDs are indirectly and under cover of anonymity able to provide assistance to advocates on issues such as Guardianship, Public Benefits, Elder Abuse Prevention, etc., as long as their signatures don't appear on paperwork and names are not mentioned publicly. Needless to say, this has an enormous chilling effect on a developer's ability to engage in issue advocacy.

TARGETING

Guidance Provided

STATE	YES	NO
AL	By ensuring monitoring reports comply with Standards	
HI	Provided through Standards	
ID		NONE
IA	By reminding LSC grantees about means testing	
NV		Not familiar with this area. Don't get involved with who providers serve
NY		NONE
NC	OAA targeting language in contracts	Have not otherwise focused on this
PA	Aging services directive instructs focus on targeting services to those in greatest social and/or economic need	
UT	LSD review with provider the need to meet the priorities set out in the OAA and regularly discussed ways to meet those priorities	
WV		The provider has the targeting guidelines and knows to only serve the needy (low-income, disabled, very rural, minority) or having some other factor making it particularly hard to get a lawyer. No third party referrals accepted. The client must make contact directly with the provider.
WI		Targeted groups listed as response

Special Measures Exist to Ensure Access By LTC Facility Residents

STATE	YES	NO
AL	Coordination required between LTCO and Legal and Standards ensure LSD is backup to LTCO	
HI	NR	NR
ID		NONE
IA	Provides materials, makes referrals, shares list of providers, sends the LTCOP to hotline and legal providers for help.	
NV		NONE
NY		NR
NC		NONE
PA		NONE
UT		NONE
WV		They're trained on available services and will call as needed
WI	Provided for in the State Guidelines	

SERVICES PROVIDED/REPORTING SYSTEM

Reporting System In Place

STATE	YES	NO	MANUAL	COMPUTERIZED
AL	✓			In effect since 10/2001. Data captured as part of larger system
HI*	✓			
ID	✓			AAAs enter data as part of larger system
IA	✓		Quarterly report form	
NV	✓	X		
NY	✓			Selected system focuses solely on units of service
NC	✓	X		
PA	✓	X*		In development now.
UT	✓	X		The provider has a system
WV	✓			
WI		X		For benefits specialists only. Aging network system in development

HI- System provides 1) demographic data; 2) service utilization; and, 3) expenditures.

NV- This is an area in which the LSD does not get involved.

NC- A few regions report on types and numbers of cases; others unclear what service is being provided and some only ask providers to prepare Wills and Advance Directives.

PA- AAAs keep the records of legal services provided. They submit info to the Department.

Information from T.3 B Legal Providers Available from Reporting System

	AL	HI	ID	IA	NV	NY	NC	PA	UT	WV	WI
# of Cases	ND	✓	X	R	NA	X	*	ND	X	R	✓
Types of cases	ND	✓	X	R	NA	X	*	ND	X	R	✓
\$ Saved	ND	X	X	R	NA	X	X	ND	X	X	✓
\$ Benefit	ND	✓	X	X	NA	X	X	ND	X	X	X
CE Info	ND	X	X	#s only	NA	X	X	ND	X	*	Hours only
Training Received	ND	X	X	X	NA	X	X	ND	X	X	X
Case Narratives	ND	✓ /X	X	✓	NA	X	X	ND	X	X	R
Staffing Changes	ND	X	X	Managing Atty only	NA	X	X	ND	X	*	X

AL- all areas mentioned reflected in comprehensive report.

ID- only # of hours of legal assistance provided is captured.

WV- The provider documents CE information internally and since there are only 3.5 FTE staff persons, the LSD knows about changes in staffing informally.

STATE TITLE VII ELDER RIGHTS COORDINATION

Interaction with Partners

	AL	HI	ID	IA	NV	NY	NC	PA	UT	WV	WI
SLTCOP	R		R	R	R *	ND*	R	As Nec	R	R	R
Elder Abuse Prevention	Referrals	LSD job	LSD Job	Was LSD job	R	NR	X*	As Nec	R	R	X
APS	NR	R	LSD Job	R	NR	NR	X*	As Nec	R	R	X
SHIP	NR	X	NR	R	NR	NR	X	As Nec	R	LSD job	LSD Job
Sr. Hotline	NR	R	R	R	NA	NR	NA*	As Nec	NA	\$\$ ended 9/02	NA
SALTS/TRIADS	NR	R	NA	R	NA	NR	Not aware of these until survey	As Nec	NA	In SLTCO's absence	NR
Bar Cmttees/Section	NR	R	R	R	NR	R	R *	As Nec	R	X	X
Public Guardianship Program	NR	R	NA	In Dev	NR	NR	NR	As Nec	NR	X	NA

HI- time constraints in both programs make contact difficult

NV- LSD has administrative subpoena power enabling her to obtain helpful information for SLTCOP trying to assist residents. LSD is guardian of last resort in NV but has avoided being appointed thus far during a 2-year tenure.

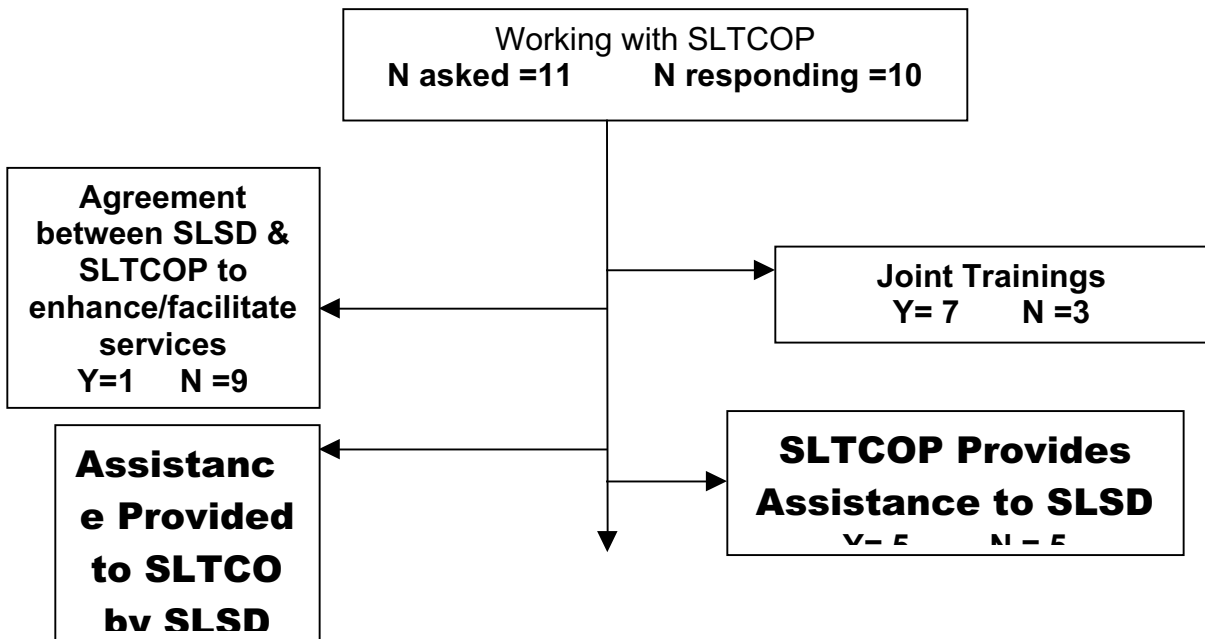
3 years ago APS became a part of the elder rights unit following a LSD analysis. Resources and personnel were enhanced and the LSD now consults in APS cases/exercising subpoena authority and responding to subpoenas received by APS, redacting records, prepping social workers for testimony and accompanying APS staff to court.

For the past two years, the LSD has partnered with Legal Aid and the State Cooperative Extension Service to apply for a *hotline* grant but we have been unsuccessful.

NC- All Title VII *elder abuse* money goes to the field and is monitored by the SLTCOP. By the time the money is divided, there is not much to design an effective program. The programs mostly do brochures.

LSD has partnered with the *Bar Association* and the Law Firm of Kilpatrick Stockton to start a new pro bono adoption service in three (3) counties for grandparents raising grandchildren.

Working with SLTCOP— CHART



Funding for State Legal Assistance Development Program

Source of LSD Funding

STATE	OAA Admin	OAA Title VII	State Appropriations
AL			Agency budget
HI	R	Special Projects	R
ID	R		R
IA	R	Until a year ago because LSD was EA	R
NV	R 30%		R 70%
NY	R		
NC	85%		15%
PA			General state funds
UT	75%		25%
WV	R		R
WI	R		

Funded Activities

STATE	AL	HI	ID	IA	NV	NY	NC	PA	UT	WV	WI
Printing	ND	T.3 Adm	X	X	R	X	X*	X*	R*	X	X*
Training	ND	T.3 Adm	X	X	R	X	X*	X*	R*	X	X*
Special Projects	ND	T.7 & Spec Grant	X	X	R	X	X*	X*	R*	X	X*
Travel	ND	T.3 Adm	X	X	R	X	X*	X*	R*	X	X*
Legal Reference Resources	ND	T.3 Adm	State Code & Elder Abuse Periodicals	X	R	X	X*	X*	R*	X	X*

X*= No special budget so LSD requests as needed and seeks approval

UT- never been given a budget but was told that approx. \$3,000 a year is allocated beyond salary and benefits.

Title III B Legal Services Program Funding

STATE	AMOUNT OF TITLE III B FUNDING
AL	ND
HI	\$173,038
ID	\$88,000
IA	\$172,512
NV	\$200,000
NY	\$2,665,564
NC	\$390,000
PA	\$1,434,045
UT	\$60,000
WV	\$85,190
WI	\$328,000

Funding Needed at the State Legal Services Developer Level

STATE	AMOUNT OF FUNDING
AL	NR
HI	\$180,000
ID	\$200,00
IA	\$150,000
NV	\$200,000
NY	\$200,000 minimum
NC	\$90,000
PA	NR
UT	\$150,000
WV	\$130,000
WI	\$105,000

Role and Qualification of SLSD

Function and Purpose of LSD

AL	Provide state leadership in developing legal assistance programs for older individuals throughout the state as well as providing leadership and securing and maintaining legal rights of older individuals. TA to legal providers, AAAs and others to coordinate the provision of legal assistance to older people; ensure legal targeted to greatest social and economic need.
HI	Advocate to develop policy and educate older adults to ensure access to legal rights and benefits.
ID	To help establish resources/programs for legal assistance to older individuals; not provide legal advice.
IA	To develop a statewide legal program for persons 60 and older and to advocate on elder rights issues and develop an effective elder rights system. Just recently began serving in this capacity so still learning about this. Previously had numerous other duties.
NV	Advocate for vulnerable Senior Citizens in Nevada.
NY	Ensure that there are adequate, effective and high quality legal assistance services available to older persons in the state.
NC	To monitor the T.3 B legal programs to ensure legal services funds are being used appropriately; LSD role is to see that SUA has programs in place that help seniors in greatest economic/social need have access to quality legal services; knowledge about rights and those rights adequately protected. Work with aging network and policy makers in hope of better information about elder law issues and utilize all resource available to help advocate protection of elder rights.
PA	Should be involved and familiar with all aspects of legal assistance for Older Americans. The position should not have to be the primary person for all aspects as it's much more efficient to have others dedicated to those issues.
UT	To promote and protect the legal rights of person 60 and older in the state through development and maintenance of legal services programs and activities including educational sessions and materials.
WV	To advocate for legal needs of Senior Citizens who don't have means to obtain a lawyer independently.
WI	Develop policy for OAA legal services programs; work with different program components and stakeholders, deal with budget, funding, reporting and relate to AoA.

Summary of Legal Services Developer’s Current Duties

<p>1. Technical Assistance</p> <p>2. Dissemination of Information</p> <p>3. Introduction of new projects statewide</p> <p>4. Lack of funding prevents further development of the T.3 B legal program</p> <p>5. Development of reporting form and ensuring compliance</p> <p>6. Site/monitoring visits</p> <p>7. Working with legal providers, hotline and AAAs to ensure seniors receive assistance</p> <p>8. TA to AAAs, providers, program staff and aging network</p> <p>9. Work on legislation</p>	<p>10. Hotline grant development</p> <p>11. Assistance with substantive issues like kinship care and guardianship</p> <p>12. Develop policy of OAA legal programs</p> <p>13. Fiscal manager of OAA legal programs</p> <p>14. Work with program component/stakeholders</p> <p>15. Put out fires and address conflicts</p> <p>16. Assist consumers who contact the SUA for information and help with benefits</p> <p>17. SUA policy analyst</p>
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Current duties of developers illustrate a gap from what most identified as the function and purpose of legal services developers; i.e., to develop quality legal services programs for older persons.

Current Duties Unrelated to Legal Services Development

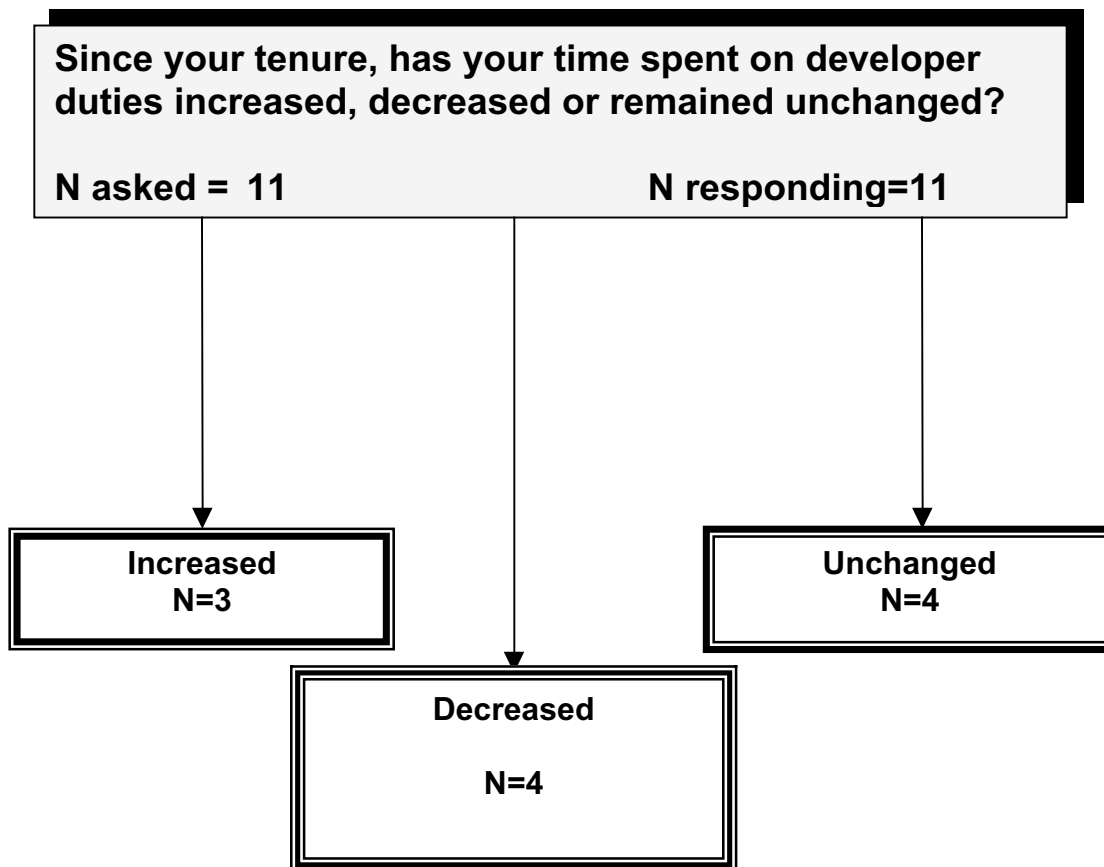
1. Continuing Education certification management	10. Supervising the SLTCO	18. Review of contracts
2. Area Plan Management	11. Hearing Officer/Rules Coordinator	19. Review of grants
3. Client correspondence	12. Analyzing various programs	20. Labor/management disputes
4. Telephone inquiries	13. Supervising non-elder rights specialists	21. Agency compliance issues with HIPAA
5. APS coordinator	14. Directing SHIP	
6. Supervising Title V	15. Agency representative for Dept Bds and committees	
7. Oversight of I & R	16. Agency policy development	
8. Directing the Elder Abuse Program	17. Litigation not related to T.3 B legal program	
9. Revision of policies and procedures for all programs		

Legal services developers are often required to perform duties that are not associated with the development of Title III B legal services programs or duties that promote the development of elder rights. There are times, however, when developers will willingly do unrelated duties just to build partnership relationships and establish credibility.

Education Required

STATE	REQUIREMENTS
AL	College education and basic legal knowledge. Thorough knowledge of OAA programs.
HI	J.D. but not a law license.
ID	College degree in business or human services area. A law degree is desirable.
IA	4-year degree (not a law degree). A law degree makes me more effective.
NV	Licensed attorney by State Bar of NV.
NY	4 yr college degree in Public Administration or like area. J.D. preferred.
NC	Strengthening the requirements in the past 10 years when the LSD was an accounting staff person, the LSD is now required to be an attorney.
PA	Position does not require a legal background.
UT	Legal education; some background in public administration.
WV	Does not require that the LSD be an attorney but it would be an asset.
WI	Attorney not required although being one would help with some aspects. Breadth and depth of knowledge of public benefits; good ability to deal with arcane of those programs and to be able to read and understand statutes, rules and administrative guidance.

TIME SPENT ON DEVELOPER DUTIES



Of the 11 developers responding to this question, only 3 have noticed an increase in the amount of time spent on what should be their primary duties. The data further shows that except for 1 developer, the 4 whose time remained unchanged are spending less than 50% of their time on development duties. It is not extremely encouraging.

Required to act as Attorney/Counsel for the Agency

	ST AT E	Y E S	NO
AL			X
HI			X
ID			X
IA			X
NV			X
NY		☯	
NC			X
PA			X
UT			X
WV			X
WI			X

Some developers have constantly remind co-agencies that they are not

learned that they have to workers, AAAs and other the attorneys for the agency.

An informal/ad hoc role of in-house counsel is common for developers who are licensed attorneys. It is convenient for the agency and will usually produce a response faster than if more formal and appropriate channels are used.

The problem with either use of developer is the conflict of interest it presents for the LSD, particularly if the issue on which that LSD is working is adverse to the interests of older persons. Unfortunately, developers have no authority to refuse to accept such a role assigned by an employing agency. Education of the dilemma sometimes is helpful but when that fails, there is no other avenue for a developer to pursue relief.

**PHASE III- RETREAT
FACILITATED GROUP DISCUSSION**
National Conference Center
Lansdowne, Virginia
June 6-8, 2003

FACILITATED DISCUSSION AREAS

- 1. Conflicts of Interest & Relationships**
- 2. Development of the Quality and Quantity of Title III B Legal Programs**
- 3. Appropriate Duties for Legal Services Developers/Job Description**

FINAL AGENDA

Friday June 6, 2003

Attendees Arrival, Individual Check-in to rooms. Dinner from 5:00-7:00 pm

Saturday June 7, 2003

7:00 - 8:00 am	Breakfast
8:15 - 8:30 am	Opening/Welcome/Purpose
8:30 - 10:00 am	Rotation One
10:00-10:15 am	BREAK
10:15 – 11:15	Rotation One (Part II)
11:15 – 12:00	Rotation Two (Part I)
12:00- 1:00	LUNCH
1:15 –3:00	Rotation Two (Part II)
3:00 - 3:15	BREAK
3:15 - 5:45	Rotation Three
6:00 - 7:00	Dinner

Sunday June 8, 2003

7:00 - 8:00	Breakfast
8:30 - 10:30	Reports from Facilitators and Consolidation of Group Work
10:30 - 10:45	Wrap-up
11:00	Closing

Group I

Bill Graham- (NY)
Vern Norwood –(KS)
Mary Jane Ciccarello- (UT)
Sarah Orr*- (WI)

Group II

Val Corzine – (CO)
Jane Thomas – (LA)
Lynne McCullough – (MI)
Linda Calvert – (WV)

Group III

Lynne Berry – (NC)
Sally Ramm-*cancelled*– (NV)
Carol Stamatakis – (NH)
Deanna Clingan-Fischer – (IA)

* Sarah Orr, a provider attorney, attended for LSD Glenn Silverberg

Facilitators and Reporters

Conflicts of Interest & Relationships

Jim Bergman and Penny Hommel

Development of the Quality and Quantity of Title III B Legal Programs

Dawn Washington and Natalie Thomas

Appropriate Duties for Legal Services Developers/Job Description

Rick Wingo and Richard Ingham

Observers

Barbara Dieker, Director
Office of Consumer Choice and Protection
U.S. DHHS Administration on Aging

Brandt Chvirko
Program Administrator
U.S. DHHS Administration on Aging

PHASE III- A Facilitated Discussion

Overview

During the course of the intense day and a half spent discussing some very tough issues, this small group of usually isolated persons who in their individual states are assigned a title, handed expectations and responsibilities found common ground and renewed spirit. Themes noted time and time again were that developers overall love doing the job of developer because it allows them to improve lives, make a difference, advocate for the elders and really get into problem solving while empowering elders in their communities. There is frustration, however; many noted that (1) there is a lack of independence for developers, (2) funding is inadequate for important elder rights functions over which developers are supposed to have responsibility, (3) they are frustrated with the location of developers, to which the solution would be to move out of their current situations in state government and (5) a change needs to be made to state government which is often the barrier or roadblock to successful State Legal Assistance Development Programs. Repeatedly in each state there was recognition of the need for a full-time Legal Services Developer.

Developers struggled to define and understand the conflicts of interest that many of them and their peers are forced to work with on a daily basis. The initial eye-opener was that a mere 4-6%ⁱⁱⁱ of the LSDs in the country are actually full-time and the rest are either part-time or are constructively part-time, in that they have so many non-legal services developer duties, they cannot be considered full-time legal services developers. Some of the most frustrating aspects of this dilemma are that State Unit on Aging Directors do

not recognize the conflicts. Simply writing rules would not resolve the problem because a problem must first be recognized and identified before it can be resolved.

Methodology of the Retreat

There were three topics to be addressed:

1. Conflicts of Interest & Relationships
2. Development of the Quality and Quantity of Title III B Legal Programs
3. Appropriate Duties for Legal Services Developers/Job Description

The participants were divided into three groups and the groups were given two and one-half hour segments to discuss each of three topics with the help of a facilitator and a resource person.^{iv} Each group decided how to prioritize information to allow the most important thoughts, concepts, ideas and recommendations to be brought forth to the larger body. The facilitators utilized a variety of facilitation tools. The Quality Group facilitator used the Multi-voting^v process; the Appropriate Duties of LSD Group Facilitator used the Ranking^{vi} process and the Conflicts Group Facilitator used the Consensus process^{vii}.

Outcomes

The Retreat was extremely successful. The benefits, first and foremost, were results that are reported as part of this Study. Additional benefits were a greater understanding of and appreciation for the problems that are currently being experienced by developers. There was an exchange of anecdotal information among developers that has become so critical because developers are the one group who has never received designated funding through the Older Americans Act.^{viii} It leaves developers without an avenue for regular meetings or trainings. They are forced to capitalize on whatever impromptu or ad hoc gatherings that present themselves for professional growth and enhancement. The final positive outcome was that two representatives from the U.S. Administration on Aging attended Saturday's meeting and had the opportunity to hear some of the concerns and frustrations of the developers. This was the first time for such an occurrence, at least in the past 10 years, and it was a mutually beneficial exchange.

State Legal Assistance Developer Mandate







Title 42 USC § 3058j requires that States provide the services of an individual who shall be known as the 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 service 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 service provided to older individuals.

In the 1992 Amendments, the picture was a lot clearer because the language was more detailed as to the functions of the developers. Congress simplified the language that was in the 1992 Amendments but in the Report prepared to accompany S. 1536 which amended the Older Americans Act^{ix} in 2000, the Senate Committee on Health, Education, Labor and Pensions indicated that it was their intent that “States and their legal assistance developers should **continue** (emphasis added) to develop the quality and quantity of legal assistance available to older individuals.”

Obviously, *continuation* is an indication that a process put in place should not be discontinued merely because language had been simplified. It is as if Congress assumed that states had such a clear understanding of what it takes to provide quality legal assistance and the necessary quantity that is required to meet the needs of older individuals that such detailed language would no longer be required.

The 10 million dollar authorization for funding that has appeared in the OAA since 1992, and changed to such sums necessary with the 2000 Amendments, has never resulted in an appropriation for developers. Thus, some states never found money to fund the developer position. Throughout the country, states handle this federal mandate differently:

-  **label an existing employee with the title forcing the developer to share duties**
-  **others leave it open without that action drawing any retribution;**
-  **give the title to an employee but no one does the job;**
-  **contract the position out part-time;**
-  **hire a person to actually do the job of developer on a part-time basis; or**
-  **fund a full time developer and ensure that the job of developer is done.**

**“No Two
Developers Do
The Same
Thing”—**

Linda Calvert
LSD-WV

Conflicts of Interest/Relationships

The purpose of the sessions was to address several questions about barriers, including conflicts of interest that developers often encounter. Developers explored how these barriers and conflicts interfere with their ability to carry out responsibilities for developing and maintaining high quality and high impact legal services targeted to the most vulnerable elders in need of assistance. In addition, developers shared known limitations on their responsibilities to provide leadership on broad elder rights advocacy so that issues can be addressed systemically at a policy level rather than individually on a case-by-case basis.

As each of the three groups rotated through the conflicts session, facilitators guided their discussion with four questions:

- 1) What are the major causes of conflicts as developers?
- 2) Are there ways to work around the conflicts while remaining in their current situations?
- 3) What is the effect on the Title III B legal services program as a result of the identified barriers and conflicts of interest?
- 4) What has been the reaction of the management and supervisory body to the identified barriers and conflicts of interest, as well as its effect on the Title III B legal services program?

The three groups recognized that there are real and significant barriers and conflicts in most states that preclude adequate performance by those in the role Legal Services Developer. All felt that the majority of SUA directors and supervisors do not recognize these barriers and conflicts.

Key barriers identified include:

- Lack of funding and resources leading to inadequate time for job performance and conflicting demands; only 2-3 states have full-time developers and most states average from 20% to 25% of time for legal services development work;
- Lack of authority and political pressures and limitations from being part of state government;
- Structural and administrative limitations linked to limited support and leadership from AoA (for example, the lack of a job description and guidance for SUAs on the critical role of the developer).

The concerns about barriers and conflicts expressed by the developers that were present at the retreat fell into three main areas: structural and administrative barriers and conflicts at the state level, leadership and support limitations at the federal level, and job duty conflicts of interest.

Structural and Administrative

At the state level these primarily dealt with programming as a whole, as well as individual requirements and expectations. Within the area of programming at the state level, developers addressed (1) the lack of funding, budget constraints and minimal resources which lead to conflicting demands on developers; (2) a focus on numbers at the state level resulting from brief servicing conflicting with impact work and direct representation; (3) a lack of pro-bono commitment of legal services to supplement Title III B funds – the majority of states having an insignificant minimum percentage; and (4) the absence of

priority given to legal services again reflected by state minimum percentages as demonstrative of the lack of consideration and priority given to state legal services.

Developers suggested that states should place less emphasis on numbers and alternatively, place more emphasis on benefits outcomes to the most needy, thus making legal services an integral part of the state aging services network.

Leadership and support

At the federal level, the conflicts discussed dealt primarily with pressure felt as a result of action and inaction of the AoA and the LSC. With regard to the AoA, developers discussed the failure of the AoA to take steps mandated by the OAA itself to promulgate regulations, the most recent regulations having been issued in 1987. Many developers feel that the OAA has only put into place general authority. Without the presence of current regulations, there is little to no clear authority with which developers can adequately fulfill their jobs, in large part due to the lack of even a model uniform job description specifying tasks and the manner with which they are to be done. Developers also expressed frustration at the limited priority given to developers and legal services by the AoA and the National Association of State Units on Aging (NASUA) resulting in the limited strength of the AoA in providing much-needed leadership and enforcement of OAA provisions.

Also identified within this area of leadership and support were developers' frustrations in attempting to coordinate T.3 B legal services with the structure of the Legal Services Corporation (LSC), i.e., the lack of state aging network leadership involvement with LSC reorganization; the barriers set into place as a result of LSC

restrictions; and, the struggle to define and understand the restriction on means testing in the OAA versus mandatory LSC means testing. The groups offered the solution of joining the coalition efforts of groups such as NAELA^x, and focusing on shifting toward demonstrating to Congress and State Legislatures that legal services are a good use of financial resources and are an asset deserving of more attention and priority.

Job Duty

Another area of discussion of conflicts of interest issues was the parameters of developers' actual job duties, i.e., the difficulties arising when also being used as general counsel for their respective departments; inevitable conflicts arising out of situations when required to represent the agency against clients for whom they should be advocating; conflicts of interest arising between developer requirements and State Bar mandates such as client confidentiality when the developer is also a licensed attorney; and the conflicts involved in needing to protect client privacy and confidentiality while meeting state integration of services such as common data bases and reporting requirements.

These were by far the most frequently discussed issues in the sessions. Specifically, areas in common included:

- ✓ The requirement that developers take positions in conflict with other state policies such as with the privacy regulations of HIPAA;^{xi}
- ✓ The conflict between state and local levels of governance;
- ✓ The conflict between being in state government and the OAA mandate that developers be overt and visible advocates; and,
- ✓ Superiors with competing demands on one developer.

Developers also expressed frustration with the barrier inherent in the lack of express and/or implicit authority to work on legislation, as administrative rules differ by state. The expertise of LSD's varies but the limits placed on voicing their opinions and utilizing their expertise is consistent, and there exists a lack of protection and increased vulnerability for LSD's if they are contracted out. Developers recommended instead that states adopt the position of developer in their respective State legislation, similar to that of Oklahoma State Legislation. Such a move would provide developers with administrative guidance on their role and a solution to many of their conflict issues. Also recommended was that states develop a conflict of interest policy regarding roles and the location of developers in State government, thus taking away the burden of rectifying conflicting demands and allowing developers the time and energy to focus their efforts on their enumerated tasks and duties.

Following an examination of the barriers and conflicts, each group developed recommendations as to what is needed to overcome the barriers and conflicts they identified. In the broadest sense, it was agreed by all that what is most needed is to create a shared vision is what the legal services developer position is and why it is so crucial to assuring that every state has a legal advocacy system that can protect and enhance essential rights and benefits of those older persons who are least able to speak and advocate on their own behalf.

“. . . Just Continue to Function”

Lynne Berry,
LSD-NC

Conflicts of Interest Recommendations

☆ **(1) The Developer Position Needs To Be Full Time.**

This would address the conflict of interest that is inherent in having multiple roles, particularly where the developer is also counsel for the agency and, as counsel, has to defend the agency in administrative appeals/litigation, write administrative rules, etc. that may be harmful to vigorous advocacy by legal services.

There was discussion of whether there is a need for statutory independence for developers as the OAA provides for long term care ombudsmen. There was consensus that this may not be needed, and it is more important to first get the position full time in each state and get a uniform job description that enumerates the many important roles and responsibilities for developers to be effective.

☆ **(2) A Uniform Job Description Is Needed As Called For In The Older Americans Act And Greater Leadership And Guidance To SUAs Is Needed From AoA.**

Because the OAA does not include any detailed discussion of the roles and responsibilities of state legal services developers as it does for ombudsmen, there is a serious need for a uniform job description. The job description needs to indicate what developers should do and also what they should not do, for example, they should not be put in the conflicting role of also serving as legal counsel for the SUA. Since the 1992 Amendments, the Older Americans Act has called for AoA to issue a job description. There is a real need for this in most states and developers are willing to work with The Center for Social Gerontology to assist AoA in this important effort.

Related to this, there is a need for AoA to issue regulations on the 2000 Amendments and to provide leadership and oversight with the states to ensure that there are strong and effective legal developers in states across the country. Given AoA's concern for accountability, outcomes, and limiting duplication of effort, the role of the developer in assuring all these things in legal providers needs to be stressed.

☆ **(3) Revamp The Approach To "Marketing" And Tie Legal Services More Closely To Other Aging Network Services In Order To Increase Funding And Support.**

There is need to revamp the approach to "marketing" legal services in order to generate greater understanding and support for its value. It needs to be described in terms of the outcomes achieved for needy older persons, not in terms "lawyers" and "legal needs." Greater support will be achieved by describing outcomes in terms of protecting income, housing, health care, etc.

To increase understanding and appreciation of the value of legal services, they need to be tied more closely to other Aging network support services such as In-home care, Medicaid Waiver, Caregiver services, etc. For example, the Medicaid Waiver program and in-home care services cannot maintain people in their homes if they lose their home to eviction or foreclosure; and legal services is essential to protect against this.

☆ **(4) Statewide Reporting Systems are Needed that Show Outcomes for Older Persons and “Paint a Picture” of the Impact of Legal Services on the Lives and Well Being of Needy Older Persons**

To deal with the barrier of State Directors, AAAs, etc. not seeing the value of legal services as compared to other services such as home delivered meals; developers need to develop uniform reporting systems that include indicators of impact or outcomes for older clients. This kind of information is of particular interest to AoA.

☆ **(5) Greater SUA and Legal Services Developer Involvement in LSC Planning and Consolidation is Needed.**

Given the major changes that are now occurring in Legal Services Corporation programs in states across the country, and given the important role LSC programs play as Title IIIB providers of legal services for the elderly, it is essential that developers and others in the aging network be actively involved in the planning, consolidation of offices, and priority setting processes in the states. At present, a voice for the elderly is often not “at the table” as states undertake major reconfiguration of their programs, services, and priorities, and older persons have lost representation as a result. Further, ongoing issues relating to the LSC requirement for “means testing” while the OAA prohibits means testing but requires targeting services to those “in greatest social and economic need” require strong state leadership from the developer, and this is often lacking.

The Conflicts Sessions were useful in providing a rare opportunity to bring together developers and create a forum for them to vent their frustrations but also formulate solutions. Perhaps even more important was ultimately their knowledge that their critical but reflective attitudes on being a developer were going to be appropriately voiced and heard by other advocates, advocates with the power to address systemic problems and in turn provide much-needed solutions.

Developing the Quality and Quantity of Title III B Legal Services Programs as Required by the Older Americans Act

Defining Quality in a Title III B Legal Program: What does a developer look for?

Group 1

1. Providing direct representation to further advocacy causes
 - Targeting^{xii}
 - Impact/life changing cases
2. Community education/self advocacy
3. Private/pro-bono legal providers familiar with poverty law (substantive expertise)
4. Increased pro-bono/private legal services providers
5. Legal needs being met
6. Measurable impacts
7. Standards^{xiii}

Group 2

1. Customers satisfied with legal services
2. Ability to provide substantive information and services funded, priority areas
3. Easily accessible services/no service gaps
4. Comprehensive services (can address all issues of clients)
5. Service provided efficiently (no long waiting time)
6. Target socially/economically needy
7. Technical assistance to providers

Group 3

1. Responsiveness
2. Be able to recognize/identify legal issues and act on them
3. Knowledgeable of elder law issues
4. Willingness to serve elderly
5. Lots of options to help clients (e.g., hotlines, volunteer lawyers, legal clinics, etc.)
6. Able to monitor unmet need^{xiv}
7. Proactive to meeting “unmet need”
8. Legal developer available to develop the system

Other Elements Not Making the Top of the Groups “Quality” Lists

- Accessibility
- Referrals to appropriate sources
- Resources (e.g., staff) available (adequate) to solve client problems
- Provider not using funds to supplement other legal services and committed to OAA Title III B
- Have adequate funding
- Targeting but not excluding clients
- Achieving positive outcomes
- Ability to empower clients: “self-advocacy to do things they can on their own” (e.g., apply for Medicaid)
- Increased collaboration
- Prevention
- Non-conflict of interest
- Results from legal services provider reports
- Be able to protect rights/dignity autonomy
- Confidential services
- Provider qualified to provide services (e.g., ongoing CEU^{xv} for provider)
- Pro-bono resources available for clients
- Money saved by clients

Best Entity

It is more than simply selecting the only entity that responds to an issued Request For Proposal (RFP). It is more than selecting the lowest bidder. It is more than selecting a provider again because that provider has been under contract for the past 5, 10, 15 years. Federal law actually requires that states and area agencies on aging make a concerted effort to select the provider that is best able to provide legal assistance to the targeted population.

USC §3027 (11) The plan shall provide that with respect to legal assistance--

*(B) . . . that any grantee selected is the **entity best able** to provide the particular services;*

Group 1

1. Quality measurable outcomes not focused on units of service
2. Direct representation /community education
3. Ability to do outreach/provide access to services
4. Show they have partnerships/resource development
5. Good plan to collect demographics; no means testing^{xvi} but identify need for service
6. Coordinate/collaborate with community resources/private sector
7. Specialist in elder law/guardianship and alternatives
8. Pro-bono legal providers to serve as a resource to the elderly

Group 2

1. Finding a suitable provider who is available in the geographic area (e.g., in each county)
2. Knowledge of issues of elderly and caregivers
3. Comply with State Standards
4. Priority services
5. Citizens involvement to determine types of legal services needed (through community groups, e.g., faith-based)
6. Needs assessment (via State or AAA)
7. Adequate funding
8. Culturally competent provider^{xvii}

Best Entity (cont.)

Group 3

1. Offer them real money
2. Willing to provide outcome measurements
3. Dedication to Elder Rights^{xviii} issues
4. Responsive to needs
5. Handle OAA priority issues
6. Meet Standards (if State has them)
7. Meet multiple needs of citizens including diversity
8. Expertise in substantive areas
9. Be able to “collaborate” with State on behalf of clients
10. Clients “satisfied” with legal services

Additional Elements from All Groups on Best Entity

- Ability to provide backup to Elder Rights programs; i.e., SHIP,^{xix} LTCO, Elder Abuse Prevention * **Barrier: whose money pays for this backup?**
- Ability to serve rural areas
- Good reporting system
- Aging Specialist (e.g., someone who knows aging issues)
- Provides services after funding is exhausted
- Can be a private attorney that is willing to dedicate time to Title III B
- Capacity to provide client representation
- Adequate staff
- Senior Citizen law Projects—satellite offices
- All attorneys must be able to do direct services and paralegals must be under direct supervision of attorneys
- Show results
- Number of staff available
- Evaluation process to determine which entity to select
- Past record (for those already providers)
- Available to attend trainings
- Agency “stability”
- Explore other funding options (provider willing to seek out other. . .)
- Easy to work with /responsive to LSD request (recognize that state is not “evil” or “lazy”)
- Not afraid to go against the “state” when advocating for the client

Improving the Quantity of Title III B Legal Services Programs

It was ultimately determined that “quantity” is directly linked to and influenced by “quality.” It was agreed that quantity is not just based upon a “contract units of service concept” and thus must be looked at differently and not in a vacuum. In doing so, the groups struggled to bring forth some ideas and were not forced to vote and prioritize but just asked to think of ways to positively influence the growth and expansion of legal services. Clearly, it was a struggle to break away initially from the “just numbers satisfying quantity” theory.

Group 1

- Creatively “determined”
- Based on target population/case priorities
- % increased rather than #s
- Think of trends
- Increase minimum % of funding/increase the “floor” that councils/AAAs provide for legal services, which naturally affects quality

Group 2

- #s
- Tied to efficiency (like tie quantity to advice line)
- Pro-bono program in every county
- Creative ways to get “quantity” through benefits counselors, tenants rights programs, SSA advocates, tax counselors, etc.
- Private training for attorneys to be better equipped to take on elder cases

Quantity (cont.)

Group 3

Added that quantity was related to accessibility. Felt that it was influenced by the cultural, language, etc., and the provider's ability to serve.

- #s (# hrs, cases opened/closed)
- Restricted by funding
- Have minimum allotment – has nothing to do with actual need
- Pro-bono supplemented with services available, private attorneys
- Based on cost (what does it cost in one area of state vs. another area of state)
- Use of “lay advocates” [can work on some consumer issues]

Addressing Poor Quality Providers

This was an extremely thought provoking area for each group. Many developers when given scenarios realized that they were 1) without the proper authority to address the situations, 2) without the experience to adequately address the situations and/or 3) completely in unfamiliar territory and having to wage a difficult balancing act of carrying out their sworn oath and duty of loyalty and ethics of a profession with ensuring the continued existence of a necessary service to a vulnerable population, a service over which they suddenly realized they had minimal to no control.

The three scenarios provided to the groups were as follows. The question in each is, as the developer, what do you do?

Example 1:

Ethical Violation/Malpractice Issue

It is reported by an Ombudsman that a legal provider has forged a document in a case.

GROUP 1—

Ideal Resolution:

Agreed that this was indeed a contract issue and initially wanted to meet with the provider, document the problem, verify the veracity of it, review the previous work but give notice and possibly end the contract. However, there was a realization.

Barrier:

The LSD is without any direct authority to end a contract or take any action.

Current Resolution

Therefore, the LSD would go through the proper authority/intermediary before taking action.

To the query raised: “In the event of harm to the client who gets sued?”

The answer was given: More likely than not, the provider, the regulating funders, including the State.

GROUP 2—

Ideal Resolution:

Terminate the contract with this provider.

- Have a process in place to deal with this at the State Unit on Aging level.
- Document what was happening.
- Send it to the appropriate authorities.

Barrier:

This would have to be taken to a higher authority/supervisor.

Current Resolution:

Exercise the professional/ethical stance and report the provider.^{xx}

GROUP 3 —

Ideal Solution:

View Ethical and Contract issues separately.

Hope that there are other attorneys available in the provider agency and refer clients to the other attorneys in the agency so that client services could continue.

Barrier:

Limited options in the State.

Current Solution:

Report to Contract Manager at the AAA.

File Grievance with the State Bar.

Example 2:**Poor Job Performance**

The legal provider is consistently failing to show up at administrative hearings.

GROUP 1—**Ideal Solutions:**

1. Withhold funding for the Provider.

Barrier: Can only be done with backing from the SUA.

2. Rely on State Standards to Address this very Issue.

Barrier: Many states have no Standards that would address this issue.

3. Fall Back on Contract Language.

Barrier: The Contract could be huge if it addressed every situation that could possibly arise and this type of issue might not be covered specifically enough to make this a contract violation/breach.

4. Talk to the Legal Services Officer/Attorney in your Office.

Barrier: Unless of course, you are the Legal Services Officer/Attorney in your Office that handles those issues and therein lies a conflict^{xxi}

Current Solution:

Work with the AAA to get the provider to a meeting.
Utilize training and technical assistance for the provider.

GROUP 2 —**Ideal Solution:**

Go to the AAA to get the contract revoked. Block the funding to the AAA if they interfere with addressing a poor performing provider.

Barrier:

Consider whether there will be an obligation to serve the client and, thus, a need to find an attorney to file malpractice suit against the poor performing provider that committed malpractice if the client was harmed.

Current Solution:

A complaint filed with the State Bar by the Legal Services Developer and by the senior.

GROUP 3—***Ideal Solution:***

Go to AAA about the problem and LSD handles issue with provider through monitoring visit and develop a Plan of Corrective Action.

Barrier:

Authority Not there.

Current solution:

Refer client to the AAA to file a complaint.
Grievance by LSD with State Bar.

Example 3:***Delivery Issues (not involving the merit of the client's case)***

Complaint received that the legal provider is arbitrarily agreeing to serve certain people as clients but turning away other people as clients.

This was an area where each group clearly recognized over and over again that getting back to basics with the provider was critical to improving the provider's performance if the provider was to be retained. Establishing that the problem was indeed a delivery issue and not one involving the merits or substantive issues led each group to think of investigating the performance of the provider and evaluating the abilities, measuring the possibilities and outcomes. The focus was less on punitive actions against the provider but ways to strengthen the provider and ways to develop, craft and build the program within their state.

Group 1 —

- Training for provider: what the OAA says/Title III B legal training.
- Monitoring system strengthened.
- Method of evaluation: on-site visits, look at them perform/ observe hearings, etc.

Group 2 —

- Talk with the provider about the problem.
- Renegotiate the contract.
- Eliminate the provider but that diminishes services provided.
- Understand the nature of the problem (provider doesn't understand what they should be doing).
- Go back to Standards.
- Regular meetings with providers.

Group 3 —

- Look at the contract
- Monitor
- Referrals to a volunteer attorney
- Meet with the Director (legal program's boss).
- Take them to the OAA; they may be in violation of some provision and they just don't know it.
- Training/technical assistance
- Make sure you address in contract.

Summary of Quality Discussion

The groups had a brief period of time to do some brainstorming about addressing poor quality providers. What came to mind were the factors that needed to be considered when addressing poor quality providers. These were top recommendations.

- ❖ Consider the political constraints.
- ❖ Having Standards in place makes it easier to address these situations.
- ❖ Funding is an issue (inform providers of grants/funding opportunities)
- ❖ Deal with the "conflicts of interests".
- ❖ "Who does what?" and "How?" --- Addressing the question 'are you collaborating with other agencies?'
- ❖ Build referral structures.
- ❖ Better reporting to show benefit.
- ❖ The provider needs to show "real life" stories (case histories).

APPROPRIATE DUTIES OF LEGAL SERVICES DEVELOPERS

Rick Wingo, the lead facilitator for the Retreat, led this topic and found that it worked well to move the thought process along with “themes.” In the context of getting the groups started on their task, he was able to get them to think about the positives in what they were doing and out of that emerged a consolidated ranking of responses to:

“I love Legal Services Development because . . .”

- **It allows me to help Improve lives.**
- **Lets me Make a difference.**
- **I get to Advocate for the elders.**
- **I enjoy Problem-solving.**
- **Allows me to Empower Elders/Communities.**

But that was just the beginning of the task because the next step forced each developer to think of change, whether that change was feasible, within view or completely intangible.

“But if I could Make One Change . . .”

- **I would Move Out / Or Change State Government.**
- **Become a Full-Time LSD.**
- **Become Independent.**
- **Ensure Adequate funding for an important ER (Elder Rights) function.**

Additional changes suggested:

- Mention in federal legislation, including clarity about the job
- Additional attorney personnel
- National Resource Center w/lobbyist in DC
- Clear understanding of duties, i.e., we are not the in-house lawyer
- Recognition for legal services among the aging network

Ranking of Job Duties

The three groups met and each group brainstormed. Each member voiced his or her thoughts and a consensus was reached. The members voted within their groups and the votes were counted for each job duty given. The results are listed below in their priority ranking of importance to the three groups with two resulting in a tie.

1. To boldly advocate where no Developer has advocated before.
2. Provide TA to legal assistance providers, AAAs, other aging network professionals, and lawyers.
3. Work with MD (multi-disciplinary) groups to advocate for elders' rights.
4. Have a legal program mission (similar to ORT^{xxii}) to highlight importance of legal assistance.
5. Take advantage of technological means to deliver legal information to seniors and their caregivers.
6. Assist legal assistance provider obtain funding.
7. Conduct ongoing work group meetings with AAAs, legal service providers and other service providers.
8. Develop and maintain pro bono programs.
9. Develop education materials.
10. More time to advocate
11. Conduct annual statewide law and aging conference
12. Within SUA, have periodic ER team meetings **and tied for number 12. also is**

Statewide senior citizen law days where senior citizens get free legal information

13. Ability to address legislative solution directly.
14. Monitor legislative issues on ER.

Job Duties Not Making the Priority List

While the list above provides a consensus of the three groups working on this topic, it is interesting to take note of what job duties are missing from the list. When the votes were tallied, one is left with the impression that some critical duties are missing from the priority list. Despite the fact that the actual development of legal services programs for persons 60 years of age and older is a fundamental mandate of the Older Americans Act, it is vividly absent from the final list.

The fourteen (14) duties not making the priority list are:

- Coordinate and develop quality legal services programs
- Reporting and data collection
- Targeting
- Monitoring
- Educating Seniors, officials and attorneys
- Determining unmet needs
- Networking with providers
- Standards/Policies and Procedures
- Being a full-time legal services developer
- Obtaining substantive knowledge of elder law
- Developing RFPs for providers
- Educating youth who are unaware of aging issues
- Providing leadership in defining elder rights and securing funding for that^{xxiii}
- Outreach, including Native Americans

OBSERVATION

Developers tended to rank as important only those duties that keep them at arms length from the provider. This could be because so few developers are allowed and given the resources adequate to engage in hands on development and improvement of quality Title III B legal services programs. Perhaps “development of legal services” is still a concept that many developers need help understanding.

Duties: Current, Ideal and Barriers

Developers were asked to share the duties in which they currently engage and then to come up with the duties that they would most wish they performed. Assuming the duties on their “wish list” would not mirror the duties in which they are currently engaged, the participants were asked about the barriers that prevented their ideal duties from being their current duties. The results follow.

Current Duties

- ✓ Issue work
- ✓ Draft legislation
- ✓ Review legislation
- ✓ Develop reporting system
- ✓ LSD annual newsletter
- ✓ Revise brochures/develop resource materials
- ✓ Participate in State Bar/Task Force activities
- ✓ Coordinate volunteer attorneys
- ✓ Professionals/Elder Rights system training
- ✓ Public Community education (in person/via website)
- ✓ Technical assistance to the public
- ✓ Technical assistance to professionals, the network and other staff
- ✓ Plan and coordinate annual Title III B legal services training
- ✓ Act as liaison between provider and SUA
- ✓ Securing support staff for providers
- ✓ Technical assistance to providers in coordinating training
- ✓ Technical assistance to providers for funding/grants
- ✓ Information and Assistance for legal calls
- ✓ Official responder on legal surveys
- ✓ Coordination with the State Long Term Care Ombudsman Program
- ✓ Comment/testify about rules affecting services
- ✓ Reports (periodically) on Title III B legal services
- ✓ Development of Standards/Policies Procedures
- ✓ Legal casework/managing litigation/lawsuits
- ✓ Monitoring/Site visit
- ✓ State planning for legal services
- ✓ Reviewing Area Plans

- ✓ Providing legal advice to regulatory agency/APS/LTCO
- ✓ Acting as in-house counsel
- ✓ Reviewing agency grants and contracts
- ✓ Acting as the compliance officer for the state agency, i.e., HIPAA
- ✓ Acting as SHIP coordinator, Caregiver coordinator, Title V coordinator, or Elder Abuse Prevention Program coordinator
- ✓ Attending stakeholders meetings
- ✓ Mediating disputes
- ✓ Developing the state elder rights plan
- ✓ Answering interdepartmental questions

IDEAL DUTIES (“Wish List”)

The following duties are things that developers believe they should be doing and would be doing **“but for”** some barrier that prevents their performance of those duties. The fact that some duties (highlighted) appear on both the current and ideal duties lists is an indication that there is disparity in what developers do from state to state. The ideal duties include:

- ☆ ***Review and comment on legislation/direct contact with legislators***
- ☆ Collaboration with the aging network to promote senior legal needs
- ☆ ***Site visits/monitoring***
- ☆ ***Community education***
- ☆ Trainings at national conference
- ☆ Opportunity for more in-depth knowledge and participation in the provision of legal services
- ☆ ***More time to work with the legal services provider***
- ☆ Time/ability to explore/pursue funding
- ☆ Ensure direct representation for most vulnerable elderly
- ☆ ***Put a meaningful reporting system in place***
- ☆ Develop state priorities
- ☆ ***Develop web site legal education and brochures for seniors***
- ☆ Participate in State Plan for legal services for the elderly
- ☆ Have oversight of the LSD budget and staff
- ☆ ***Develop training for the network and providers***
- ☆ ***Develop volunteer attorney pool and reduced fee panel***
- ☆ Review all RFPs by AAAs and provider contracts before signed
- ☆ Ability to sanction if problem with legal provider
- ☆ Unrestricted advocacy
- ☆ Set up state legal assistance advisory committee
- ☆ Ability to conduct a legal needs determination
- ☆ Analysis of legal report information
- ☆ Ensure that legal providers serve persons referred to them
- ☆ ***Within the SUA, have periodic elder rights team meetings***

In addition to noting those duties that are common to both the “wish list” and the list of current duties, it becomes emphatically clear that every developer is not allowed to engage in those activities on the “current duties” list. Those affected account for approximately a third of the duties. The remaining two-thirds of the list are not duties in which any of these developers engage but desire to and believe them to be functions of legal services developers. When asked about the disparity between current duties and the wish list, developers identified several things that they believe are barriers that prevent them from doing their jobs.

Barriers

- Ø State policy
- Ø Time
- Ø Superiors attitudes: muzzle your comments attributed to management who fears political retribution
- Ø Resources, both money and personnel
- Ø Weakness on the part of the developer organization, NALSD^{xxiv}
- Ø Isolated from talking, meetings, traveling to other LSDs (lack of good peer support)
- Ø Competition from lobbyists [*other programs have priority*]
- Ø No clear vision for what to do; no clear OAA mandate
- Ø Not a priority among other duties assigned
- Ø [*Being*] state employees
- Ø [*Forced*] directions to refer questions to provider’s offices
- Ø Hostility to lawyers
- Ø Industry hostility, but more against LTCO

ANALYSIS

In most professions, one finds it not only useful but essential to becoming better at their job to be able to discuss ideas, plans, issues, concerns, requirements as well as frustrations and fears related to their work. It is most helpful when these discussions can take place between and among others, who at some point in time, experience the same thing or share some of the same responsibilities. Most professionals find it useful, if not essential, to have a resource entity to call upon for answers to tough questions, situations of first impression, ideas and better practices for improvement and trial and error results to avoid making similar mistakes. It is that way outside of the aging network with teachers, doctors, lawyers, nurses, social workers, accountants, secretaries, etc. It is that way inside of the aging network —



St

ate Unit on Aging Directors have the National Association of State Units on Aging (NASUA) that provides resources, information, training, legislative advocacy and continuous opportunity for practitioner exchange.



St

ate Long term Care Ombudsmen have the National Ombudsman Resource Center as well as a supportive National Association of State Ombudsman Programs (NASOP) membership organization, both of which provide resource information, assistance in planning and conducting annual conferences for ombudsmen, legislative advocacy and continuous opportunity for practitioner exchange.



EI

der Abuse Prevention Programs have the National Center for the Prevention of Elder Abuse, (NCPEA) which provides information, assistance and resources.



St

ate Health Insurance Programs have the Centers for Medicare and Medicaid Services (CMS) providing information and access to training.



Ar

ea Agency on Aging Directors have the National Association of Area Agencies on

Aging (n4a) and state organizations providing resources, information, legislative advocacy and an annual conference.

It is not so for legal services developers.

In contrast, legal services developers are without a consistent avenue from which to draw resources, information and assistance on the issues directly related to development of legal assistance programs. **Equally important, unlike each of the above examples, the legal services developers are totally without federal funding under the OAA.** The Center for Social Gerontology (TCSG) in Ann Arbor, MI, as one of the four National Support Centers to the Aging Network, has always taken a special interest in legal services developers and the development of legal services for the vulnerable elderly as provided by the OAA. TCSG provides technical assistance visits to states in a variety of areas under funding received from the Administration on Aging (AoA). However, with limited funding, they are only able to offer 3-5 grants of technical assistance per year. In addition to that, nearly gratuitously, TCSG conducts orientation phone calls with new developers, maintains a website, a section of which provides ongoing technical assistance to developers as well as the aging network in general, and tries to provide access to developers, by ongoing telephone technical assistance on delivery and development issues as they arise. TCSG does not have adequate funding to provide group-training opportunities for developers, or technical assistance visits as needed by developers but makes it a priority to provide written guidance on a variety of development topic areas.

As a result, there is much disparity in what developers from state to state believe to be their actual function as legal services developer and how these essential duties are performed, if at all. There are even more disparities from state to state in the amount of time developers spend conducting actual legal services development duties. The current duties range from responsibility for information and assistance for the entire








agency to in-house counsel with variety in between such as directing the SHIP, Caregiver Program, or Title V (older workers) program.

Legal services developers across the country come from varying educational and professional backgrounds. Still one thing they have in common is almost complete bewilderment when they step into the role of developer. There is typically no one at the SUA knowledgeable about the job of the developer. This results in the developer performing the functions most needed by the SUA that no one else is doing at the time. No federal accountability exists for assessing and responding to states that have no developer, have a developer in name only, or have a developer performing less than the duties required by the OAA.

At any given time, 3-5 states may be without a legal services developer. Although federally mandated, states realize that there will be no penalty imposed for leaving the position vacant. Certainly, the same would not be true if the vacant position was that of a State Unit on Aging Director, State Long Term Care Ombudsman or Title V coordinator.

Vacancies for those positions would not be tolerated; corrective action would be required because these federally mandated programs would likely be deemed too essential to risk allowing no leadership to ensure operation of the programs. To allow positions to remain vacant or to allow people in those positions who were not equipped to do the jobs would be viewed as detrimental to the programs and there would be a fear that the beneficiaries of these programs would suffer.

There are beneficiaries of the State Legal Assistance Development Programs who suffer when there is less than a fully functioning program available to them. Some primary beneficiaries include:

-  Title III B legal services programs providing legal assistance to vulnerable seniors 60 years of age and older
-  State Long Term Care Ombudsman Programs
-  Elder Abuse Prevention Programs
-  State Health Insurance Programs
-  Area Agencies on Aging
-  Older persons and their families in every state and territory receiving Older American Act funding
-  Aging network

The clients of the elder rights programs as well as the clients of the Title III B legal services programs benefit from well trained, well informed and efficient legal services developers upon whom all of the above should be able to rely for information, guidance, technical assistance and training pertinent to the legal needs, rights and benefits of older persons. Yet, looking at some of the responses provided by developers in this study alone, it is clear that there are not only developers who are **not** performing these functions, but may have limited to no interaction with some of these programs, either because of lack of expertise, lack of time, or lack of training that would enable them to realize that the programs were meant to work together collaboratively and cohesively for the benefit of older persons.

The legal services development program was created^{xxv} to accomplish several goals. Its purpose was to build the state capacity for leadership in the State Units on Aging to promote legal services for the elderly within the state.

The AoA went so far as to define the activities of Legal Services Developers in a 1976 Technical Assistance Memorandum to the States (AoA-TA-76-42). Those activities were:

1. Working with Area Agencies on Aging (AAA) in order to help them design legal services programs for older persons and to assist them in developing plans for the implementation of such programs by public or private agencies;
2. Assisting LSC offices and/or legal aid programs to expand services and outreach efforts to eligible elderly clients and to design and secure funding for programs which would serve all older persons;
3. Assisting AAAs in involving the private bar in increasing legal representation to older people;
4. Stimulating law schools and other educational institutions to provide research, law related training, and/or direct client services to the elderly;
5. Designing and coordinating through State and Area Agencies on Aging, legal and aging training programs for State and Area

Agency Staff, grantees, paralegals, lawyers and older persons;

6. Providing assistance in developing legal back-up to the nursing home ombudsman programs at the area level; and
7. Working with the State Agency, AAAs, and other interested parties on research drafts, testimony, advocacy and monitoring for legislation at all levels that benefits the elderly.

In the early years, the State Legal Services Development Program was given attention comparable to the State Long-Term Care Ombudsman Program. In 1978, the Older Americans Advocacy Assistance Program was established by AoA to continue and enhance AoA's support for State agency leadership in legal and ombudsman services. This program combined legal and ombudsman efforts into a common framework. The intent was to build a strong interrelationship between the two programs, improve the coordination so that the clients of the ombudsman program could have effective legal counsel and the two programs could better handle the concerns of those most vulnerable of institutionalized and non-institutionalized elderly. It was believed that a comprehensive system would be better prepared and effective in assisting this population in understanding and exercising their rights, benefits and entitlements as authorized by Federal, State and local laws. This would insure the freedom and enjoyment of a dignified, autonomous and meaningful life for older persons.

The 1984 Amendments brought an end to this formal collaboration when the funds for State Legal Services Developers were moved from Title IV to Title III; State administrative funds virtually disappeared as soon as the ink was

dry. Even though language was also added in these amendments requiring state agencies to “assign personnel to provide state leadership in developing legal assistance programs for the elderly throughout the State,” the initial damage was done. Obscurity had found the State Legal Services Development Program.

A short-lived resurgence of the Legal Services Development Program came about with the

1992 Reauthorization of the Act. A new Title VII was created and provisions were added to Title III requiring that all States have a Legal Services Developer, (called in the Act, Legal Assistance Developer) *and, other personnel to provide State leadership in developing legal assistance programs for older individuals throughout the State.* The new Title VII enumerated the purpose of the Developer and gave vision to the content of the State's focus on developing a quality legal services program for the elderly, distinguished from merely *the*

coordination of legal services providers, which is at best what most states now provide.

In 2000, the Reauthorization of the Older Americans Act threatened the very existence of the State Legal Services Development Program. Though streamlined and still without funding, ultimately, Chapter 4 was protected and redeemed as an important chapter in the Elder Rights Title for the vulnerable elderly.

It is hard for many people to conceptualize why the State Legal Services Development Program

and the State Legal Services Developer are critical components of the elder rights system and the aging network. Too often, it is readily assumed that the true worth of each is automatically recognized and that is simply not the case. The ultimate goal of the program and the developer is to improve the quality and quantity of legal services to the most vulnerable elderly population. That includes those in institutions and those who remain in their homes or are otherwise in the community.

To accomplish this goal, there are many factors

that must be considered and many aspects of legal services development that must be implemented, not the least which include:

- ★ Selection of the entity best able to provide legal services to the elderly;
- ★ Development of the statewide program to guarantee access to services throughout each planning and service area of the state;
- ★ Concentration on legal priorities to insure that those issues affecting persons in the greatest and/or social economic needs, particularly those in rural areas and low income minorities, are being met by all legal providers;
- ★ Assurance that the greatest amount of time is being spent on direct representation and that legal community education, legal information and referral and systems advocacy are not forgotten;

- ★ Ability to provide technical assistance and training to enable the delivery of services that compliment but not supplant existing legal services and to enhance those services currently being provided within the various state and federal requirements;
- ★ Ability to provide substantive technical assistance on legal issues through the provision of information, training and/or access to training developed specifically for issues pertaining to the elderly;
- ★ Coordination with legal hotlines, Legal Services Corporation grantees, law schools and others to expand access to services and create a support system for the Title III B legal services providers, the long-term care ombudsman programs, the elder abuse prevention programs, the state and area aging agencies and aging advocacy groups;
- ★ Development of working policies and/or standards to provide adequate guidance to the legal programs and assist them in coordinating with other programs, ensuring

support to those programs and assuring that they are held accountable to the state and area agencies for the funds received to serve the vulnerable elderly population in each state;

- ★ Development of a mechanism to measure the quality and quantity of legal services delivered throughout each state; and,
- ★ Knowledge of the legal priorities, issues and subject matters needed to recognize and contribute to policy review, analysis and advocacy at the state level. Knowledge is particularly critical in those issues of greatest importance to the vulnerable elderly, including but not limited to: end-of-life healthcare documents, surrogate decision-making; guardianship; grandparents-raising-grandchildren; consumer protection; elder abuse, neglect and exploitation; health benefits and public benefits.

Very few states have programs in place encompassing all or even the majority of this partial list of factors. Some states have difficulties hiring a State Legal Services Developer, or retaining one, because without designated funding for the position, the perception is that it is of little importance. Unfortunately, not much has been done to erase this perception among State and Area Agencies on Aging. The result of this misperception is that Developers become saddled with unrelated jobs and duties that leave little time for carrying out prescribed duties of a Developer.

From the time that this Study began in May 2002, four (4) of the thirty-four developers who started out participating in the study have left their positions. There are currently seven (7) states and Puerto Rico, where the position of developer is vacant or the person in the position has the title of “Acting” developer: AK, DE, MS, MO, MT, NJ, UT (developer left in July but participated fully in the study before leaving).

At least an additional eighteen (18) developers either supervise other programs, act as Assistant General Counsel for the agency, or only do legal services development work part time. This attributed to the fact that they have only been hired on a part-time basis or they also act as a policy analyst, SHIP coordinator, caregiver coordinator, ombudsman/manager, or Title V coordinator: CA, FL, ID, IN, KS, KY, LA, MI, MN, NE, NY, ND, OH, OR, TX, VA, WV, WI.

That accounts for approximately 50% of the nation’s LSD population. The developers of the remaining states and the District of Columbia maintain a caseload because they actually provide representation to clients, or because of varying duties spend less than 50% of their time on legal services development work.

Nationwide, there are only approximately 2-3 developers who are full-time employees of their agency and perform legal services developer duties as their only job function.

There are some states that have fully embraced the mandate for a State Legal Services Development Program and legal services developer. Although these states may be unable to fully provide all that is needed, they have made a good start and illustrate the possibilities for other states and, in general, the unrealized potential for the State Legal Assistance Development Programs. The programs from the two states of the principal investigators of this Study are highlighted below.

OKLAHOMA

The State of Oklahoma has a full-time State Legal Services Developer who is very involved in advocacy within the state. He works with the Silver-Haired Legislature, the State Council on Aging and the Oklahoma Aging Advocacy Leadership Academy, the state's program for training new advocates. The OK Developer is allowed and even encouraged by his State Unit on Aging to collaborate with other advocates on proposed legislation. He successfully assisted in the drafting of legislation to create the state's new Public Guardianship Program, and is responsible for OK being the first and only state

in the country to enact into state law the language of Title VII, Chapter 4 of the Older Americans Act, as it was written in the 1992 Amendments which he broadened to include a “full-time” developer.^{xxvi}

The OK Developer works with the Legal Services Corporation Program within OK to develop their state plan, ensuring that the senior population is not forgotten and that he is identified as a resource in advocacy issues related to seniors.

GEORGIA

The State of Georgia also provides support for its full-time Developer. This has enabled the Developer to engage in the following activities directly related to State Legal Services

Development:

- Periodic revision of the Standards for the Delivery of Legal Services to Older Georgians to address issues affecting the delivery of services to clients of the Long Term Care Ombudsman Program and to address case priorities;
- Implementation of a statewide reporting system enabling the Developer to account for not only how many persons were served and how many units were provided, but an estimate of the dollar amount in savings and benefits to seniors, revealing insight into the quantity and quality of services provided;

- Development of monitoring tools for the Area Agencies on Aging to assist them in assessing their Title III B legal providers;
- Provision of assistance to area agencies in selecting their providers or identifying when there is a problem with a provider and offering assistance in resolving the issue or problem;
- Making site visits for planning and technical assistance to the Title III B legal providers;
- Accompanying the Area Agencies on Aging on their monitoring visits to make the visits more beneficial for both the provider and the AAA;
- Assisting the Title III B legal providers by furnishing a statewide brochure for them to use to conduct outreach on the program as well as other community education materials, lessening the resource and financial burden at the local level allowing more funds to be used for direct services to clients;

- Planning and providing access to an annual conference for the Title III B legal services providers focusing on substantive issues and programmatic issues directly related to their work;
- Establishing formal working agreements with SHIP and the State Long Term Care Ombudsman Program to ensure legal back up at the local level to clients served by these programs;
- Leading the Elder Rights Section at the SUA in developing and implementing the State Elder Rights Plan.

As much as these two states and their

Developers have been able to accomplish, there is so much more that each of them would like to do. Much more is needed in order to increase access to services and provide more technical

assistance to providers and the rest of the aging network. There are still barriers and financial limitations to ensuring quality and quantity for the State Legal Services Development Program. Yet, compared to these two states, others are struggling to reach this level. The disparity in programs and developers from state to state is hardly comparable to any other service provided under the Older Americans Act.

It was hardly the intent of anyone that the Older Americans Act (OAA) Title III B legal services programs be developed in a vacuum. However, there are needs that must be met to avoid such

a scenario. There must be proper selection of the entity best able to provide the service. The need is great for someone with the time and the expertise to work with the programs to assist them in developing into programs from which persons sixty years (60) and older are able to receive quality legal information, education and representation. It is critical that lead people familiarize themselves with the legal issues affecting some of this country's most vulnerable but valuable resources — seniors. This is the minimum, but the potential is so much more.

With a fully functional State Legal Services Development Program, Title III B legal services providers receive necessary training in areas of the law that will be used to protect and maintain the benefits and rights of the vulnerable elderly while assisting them with exercising those rights. Seniors become educated about issues that could be considerably more costly to them and others later. A well-developed program ensures access to information and representation on a number of priority aging and elder law issues because someone helped to develop the program specifically to meet those needs. Seniors become less likely to fall prey to home repair fraud, telemarketing scams, and are able to make advance decisions regarding their health care, end of life decision making and surrogate decision making planning. Other aging advocates, such as long term care ombudsmen, elder abuse prevention advocates, state health insurance counseling programs, caregiver support programs and others, have a local legal resource for the clients that they serve and do not have to frantically search for adequate and quality representation or watch their clients go without.

Without the minimum, a vacuum is the best we can hope for. A vacuum that sucks in our vulnerable elderly

While it may be frustrating to know your purpose and be unable to fully fulfill it, this Study has provided energizing, renewed, and reinvigorating hope and optimism that the purpose of the State Legal Assistance Development Program can be realized.

APPENDICES

APPENDIX 1

RESPONSE POSTCARD

Please Select One

- ⊕ I am willing to participate in the State Legal Assistance Developers Program Study. Send me the In-depth Survey and I will complete it.
- ⊕ I am not willing to participate in the State Legal Assistance Developers Program Study In-depth Survey. Do Not Send me the Survey.
- ⊕ I am willing to complete the State Legal Assistance Developers Program Study In-depth Survey but only at a location away from my office.

Select from these two possible options

- Expense paid night at a hotel in your city (A)
- Weekend retreat with other Developers (B)

18 responses received

STATE	Will Complete	Will Not Complete	Will Complete Only if Away (A) from Office @ (B)
CA	–		–
CO	–		
CT	–		
HI			–
IL	–		
ID	–		
IA	–		
KS	–		
LA	–		
MD	–		
MI*	–		
NV	–		
NY	–		
OH			–
PA	–		
UT	–		
WA	–		
WI	–		

*MI LSD wrote that if possible, a retreat with other developers would be helpful.

APPENDIX 2

NEVADA LEGAL SERVICES DEVELOPER STATE LAW

SPECIALIST FOR RIGHTS OF ELDERLY PERSONS

NRS 427A.122 “Elderly person” defined. As used in NRS 427A.122 to 427A.1236, inclusive, unless the context otherwise requires, “elderly person” means a person who is 60 years of age or older.

(Added to NRS by 1999, 126)

NRS 427A.123 Office created. The office of specialist for the rights of elderly persons is hereby created within the aging services division of the department of human resources.

(Added to NRS by 1989, 1485)

NRS 427A.1232 Appointment; qualifications; removal from office.

1. The governor shall appoint the specialist for the rights of elderly persons for a term of 4 years. The person appointed:

- (a) Must be an attorney licensed to practice law in this state;
- (b) Must be qualified by training and experience to perform the duties and functions of his office;
- (c) Is in the unclassified service of the state; and
- (d) Shall report upon request to the administrator regarding the performance of his duties and the functioning of his office.

2. The governor may remove the specialist for the rights of elderly persons from office for inefficiency, neglect of duty or malfeasance in office.

(Added to NRS by 1989, 1485)

NRS 427A.1234 Duties and powers of specialist.

1. The specialist for the rights of elderly persons shall:

(a) Provide advocacy and education relating to the legal rights of elderly persons and shall facilitate the development of legal services to assist elderly persons in securing and maintaining their legal rights.

(b) Provide, upon request, technical assistance, training and other support relating to the legal rights of elderly persons to:

- (1) An attorney who is providing legal services for an elderly person;
- (2) An employee of a law enforcement agency;
- (3) An advocate for residents of facilities for long-term care;
- (4) An employee of an office for protective services of any county; and
- (5) An employee of the division.

(c) Review existing and proposed policies, legislation and regulations that affect elderly persons, and make recommendations as appropriate to the administrator.

(d) Review and analyze information relating to the nature and extent of abuse, neglect, exploitation and isolation of elderly persons to identify services that need to be provided, including, without limitation:

(1) Methods of intervening on behalf of an elderly person to protect the elderly person from abuse, neglect, exploitation or isolation; and

(2) Enforcing the laws of this state governing abuse, neglect, exploitation and isolation of elderly persons.

2. The specialist for the rights of elderly persons may:

(a) Have access to, inspect, copy and subpoena all records in the possession of any clerk of a court, law enforcement agency or public or private institution, wherever situated, that relate to the abuse, neglect, exploitation or isolation of an elderly person.

(b) Have access to all written records in the possession of any person, government, governmental agency or political subdivision of a government that relate to the abuse, neglect, exploitation or isolation of an elderly person.

(c) Represent and assist any incompetent person until a guardian is appointed for that person.

(d) Use the information obtained pursuant to paragraphs (a) and (b) to resolve complaints relating to the abuse, neglect, exploitation or isolation of an elderly person.

(e) Develop services relating to financial management for an elderly person who is at risk of having a guardian or conservator appointed by a court to manage his property.

(f) Appear as amicus curiae on behalf of elderly persons in any court in this state.

(g) Perform such other functions as are necessary to carry out his duties and the functions of his office.

(Added to NRS by 1989, 1485; A 1999, 126)

NRS 427A.1236 Confidentiality of records. All records in the possession of the specialist for the rights of elderly persons relating to his counseling or representation of an elderly person are confidential and must not be released to any other person except upon order of a court of competent jurisdiction.

(Added to NRS by 1989, 1485)

APPENDIX 3

OKLAHOMA OFFICE OF ELDER RIGHTS AND LEGAL ASSISTANCE SERVICES DEVELOPMENT

ENROLLED SENATE
BILL NO. 789

By: Henry of the Senate

and

Nations of the House

An Act relating to poor persons; requiring the Aging Services Division of the Department of Human Services to establish specified program; requiring specified coordination and assistance by the Aging Services Division; requiring establishment of an Office of Elder Rights and Legal Assistance Services Development; specifying parameters of Office; providing for designation of person to administer program; stating criteria to determine sufficiency of staffing; requiring development of statewide standard; requiring provision of specified technical assistance; requiring consultation to ensure coordination of activities with specified services provided under state and federal programs; requiring specified education and training; requiring promotion and provision of education and training and stating contents thereof; requiring promotion of the development of specified legal aid and rights of older individuals; requiring the provision of periodic assessments and stating parameters thereof; requiring working agreements with specified entities; defining term; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3100 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. 1. The Aging Services Division of the Department of Human Services shall, in accordance with the provisions of this section and in consultation with area agencies on aging, establish a program 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.

2. In carrying out the program established in paragraph 1 of this subsection, the Aging Services Division shall coordinate and provide assistance to area agencies on aging and other entities in Oklahoma that assist older individuals in:

- a. understanding the rights of the older individual,
- b. exercising choice,

c. benefiting from services and opportunities authorized by law,

- d. maintaining the rights of the older individual and, in particular, of the older individual with reduced capacity, and
- e. resolving disputes.

B. In carrying out the provisions of this section, the Aging Services Division shall:

1. Establish an Office of Elder Rights and Legal Assistance Services Development as the focal point for leadership on elder rights policy review, analysis, and advocacy at the state level, including, but not limited to, such elder rights issues as guardianship, age discrimination, pension and health benefits, insurance, consumer protection, surrogate decision-making, protective services, public benefits, and dispute resolution;

2. Designate a person to administer the program, who shall be known as the State Legal Services Developer and who shall serve on a full-time basis, and other personnel, sufficient to ensure:

- a. leadership in securing and maintaining legal rights for the older individual,
- b. capacity for coordinating the provision of legal assistance,
- c. capacity to provide technical assistance, training and other supportive functions to area agencies on aging, legal assistance providers, ombudsmen, and other persons as appropriate,
- d. capacity to promote financial management services for older individuals at risk of guardianship,
- e. capacity to analyze, comment on, monitor, develop, and promote federal, state, and local laws, rules and regulations, and other governmental policies and actions that pertain to the issues listed in paragraph 1 of this subsection, and

- f. capacity to provide such information as necessary to public and private agencies, legislators, and other persons regarding the issues listed in paragraph 1 of this subsection;
3. Develop, in conjunction with area agencies on aging and legal assistance providers, statewide standards for the delivery of legal assistance to older individuals;
4. Provide technical assistance to area agencies on aging and legal assistance providers to enhance and monitor the quality and quantity of legal assistance to older individuals, including technical assistance in developing plans for targeting services to reach the older individual with greatest economic need and the older individual with greatest social need, with particular attention to low-income minority individuals;
5. Provide consultation to area aging agencies to ensure coordination of their activities with:
 - a. the legal assistance initiatives provided under the Older Americans Act,
 - b. services provided by the Legal Services Corporation, and
 - c. services provided under other state or federal programs, administered at the state and local level, that address the legal assistance needs of older individuals;
6. Provide for the education and training of professionals, volunteers, and older individuals concerning elder rights, the requirements and benefits of specific laws, and methods for enhancing the coordination of services;
7. Promote and provide, as appropriate, education and training for individuals who are or who might become guardians or representative payees of older individuals, including information on:
 - a. the powers and duties of guardians or representative payees, and
 - b. alternatives to guardianship;
8. Promote the development of, and provide technical assistance concerning:
 - a. pro bono legal assistance programs,
 - b. state and local bar committees on aging,
 - c. legal hot lines,
 - d. alternative dispute resolution,
 - e. programs and curricula, and

- f. other issues related to the rights and benefits of older individuals;

in law schools and other institutions of higher education, and promote other methods to expand access by older individuals to legal assistance and advocacy and vulnerable elder rights protection activities;

9. Provide for periodic assessment of the status of elder rights in Oklahoma, including analysis of:

- a. (1) the unmet need for assistance in resolving legal problems and benefits-related problems,
- (2) methods for expanding advocacy services,
- (3) the status of substitute decision-making systems and services, including, but not limited to, systems and services regarding guardianship, representative payeeship, and advance directives,
- (4) access to courts and the justice system, and
- (5) the implementation of civil rights and age discrimination laws in Oklahoma, and
- b. problems and unmet needs identified in programs established under the Older Americans Act; and

10. For the purpose of identifying vulnerable elder rights protection activities provided by the entities under this act and coordinating such activities with programs established under the Older Americans Act, develop working agreements with:

- a. state entities, including the state consumer protection agency, the court system, the Attorney General, the state agency responsible for equal employment opportunity initiatives, and other state agencies, and
- b. federal entities, including the Social Security Administration, the Health Care Financing Administration, the Department of Veterans' Affairs, and other federal agencies.

C. As used in this section, the term "representative payee" means the person who enters into a contractual relationship with the United States Social Security Administration to receive a social security recipient's check and to disburse funds to meet the needs of the recipient.

SECTION 2. This act shall become effective November 1, 2001.

Passed the Senate the 13th day of March, 2001.

Presiding Officer

of the Senate

Passed the House of Representatives the 9th day of April, 2001.

Presiding Officer

of the House of Representatives

APPENDIX 4

State of Utah Division of Aging and Adult Services Legal Services Developer

LEGAL SERVICES QUESTIONNAIRE TO THE STATE'S AREA AGENCIES ON AGING FY 2002-2003

1. Who is the staff person in your AAA office that handles the legal services programs?

2. What is your AAA's process for selecting a provider of Title IIIB legal assistance? Please describe:

3. Does your AAA have a contract for legal services assistance with Utah Legal Services for FY 2002-2003? Yes _____ No _____
4. If you do not have a contract with Utah Legal Services, do you have a contract with another legal services provider in your area? Yes _____ No _____
5. If you have a contract with another provider, who is that provider?

6. Even if you do have a contract with Utah Legal Services, do you actually refer cases to a local attorney or attorneys who is/are then paid by Utah Legal Services under your contract? Yes _____ No _____
7. If you answered yes to #6, please list the local attorney or attorneys to whom you refer cases:

8. If you have a contract with Utah Legal Services or another legal services provider, have both parties signed it? Yes _____ No _____
9. Would you please attach a copy of your legal services provider contract with your returned questionnaire for my files? Yes _____ No _____
10. If you have a contract with Utah Legal Services, are you experiencing any difficulties with:
_____ billing for services provided
_____ legal services provided to seniors

_____ other (please explain briefly)

10. If you are contracting for legal services with a private provider, are you experiencing any problems or concerns? Please list them:

11. Does your AAA office or do your area senior centers refer legal matters to local attorneys on a pro bono basis? Yes _____ No _____

12. If you answered yes to #11, please list the pro bono attorneys to whom you refer cases:

13. Does your AAA office or do your area senior centers use local attorneys to provide presentations at senior centers or other community settings? Yes _____ No _____

14. If you answered yes to #13, please list the attorneys you use:

15. Please describe how your AAA selects the local attorneys to whom you refer cases and/or ask for help in the senior centers:

16. Could you briefly describe the protocol used by your AAA staff and/or area senior center staff when a senior asks them for help with a legal matter?

17. Does your AAA supplement any legal services programs with state or local funds? Yes _____ No _____

18. If you answered yes to #17, please describe briefly how those state or local funds are used?

19. What do you believe are the three most common legal matters that affect seniors in your area?

- _____

- _____
- _____

20. What help would you like to have from me as the Legal Services Developer?

21. Does your AAA office staff person concerned with legal services programs have access to the Internet? Yes _____ No _____

22. Please list the senior centers in your area that have access to the Internet:

23. As your Legal Services Developer, I am very willing to meet with seniors in your area and with staff in your AAA office, senior centers, subsidized housing units for seniors, and/or other community locations. I can advise and train on legal matters, provide technical assistance, and make presentations. What are the legal issues on which you would like to have advice and/or presentations?

24. Should I contact directly the senior centers and community sites in your area to arrange presentations or events, or should I contact your AAA office staff person?
Senior centers _____ AAA office _____

25. As an area agency, do you believe that you have made available to the legal services provider adequate funds to accomplish its mission under your contract?

_____yes _____no

26. Do you believe that your area agency has, to the fullest extent possible, cooperated with and supported the provider in performance of its contract?

_____yes _____no

THANK YOU for your time and help. Please send me the completed questionnaire in the enclosed envelope or to my email address. Contact me at 801-538-4641, or at mciccarello@utah.gov with any questions, concerns, or suggestions.

APPENDIX 5

A concept of what an Operating Manual for State Legal Assistance Development Programs might look like:

Concept Outline of State Legal Assistance Development Program Manual

Introduction

Purpose of State Legal Assistance Development Program Manual

Overview and Responsibilities of Programs

1. Administration on Aging
2. State Unit on Aging
3. Area Agency on Aging

Role, Qualifications and Responsibility of the LSD

1. Function and Purpose of LSD
2. Core duties of every LSD
3. Inappropriate duties for LSDs
4. Conflicts of Interest issues

Role Clarification

1. The Elder Rights System
 - a. The Players in the Elder Rights System (who they are and what they do)
 - b. The Relationship Among the Players of the Elder Rights System
2. The Responsibility of the State Legal Services Developer
 - a. The responsibility of the Title III B legal services program
3. Serving clients of other elder rights programs

Contracting and Program Management:

1. Requests for Proposals
 - a. Key elements for a RFP for Title III B legal services
 - b. Reviewing proposals
2. Funding for Title III B legal services
 - a. Minimum percentages and minimum funding levels

- b. Waivers of the minimum requirement
 - c. Delivering services when funding is exhausted
3. Selection of Providers
 - a. A one person providers
 - b. A non-attorney providers
 - c. Multiple staff providers
 - d. LSC grantee providers
 - e. Private attorney providers
 4. Addressing Poor Quality Providers
 - a. Procedures for corrective action plans
 - b. Termination of providers
 - c. Transition guidelines between providers

Quality Assurance

1. Guidance for Title III B legal services programs
 - a. Standards
 - b. Policies and Procedures
 - c. Guidelines
2. Monitoring Providers
 - a. Goal of monitoring
 - b. Monitoring Tools
 - c. Conducting a monitoring visit
3. Site Visits
 - a. Distinguished from a monitoring visit
 - b. Possible purposes of site visits
4. Targeting
 - a. Guidance on who to target
 - b. Avoiding means-testing
 - c. Serving the most vulnerable elderly
 - i. Socially and/or Economically Needy
 - ii. Low-Income Minority
 - iii. Rural
 - iv. Non-English Speaking
5. Priority Setting While Meeting the Required Priorities
 - a. Reaching the Targeted Populations
 - b. Identifying the Needs of the Communities
 - c. Measuring the Unmet Needs
6. Adequate Coverage of the Planning and Service Area

Issue Work, Education and Advocacy

1. Importance for State LSD
2. Working within permissible advocacy parameters
 - a. Opportunities for advocacy
 - b. Partners in advocacy
3. Community Education
 - a. Range of Subject Matter
 - b. Production of Materials
 - c. Ownership of materials
 - d. Venues for educational opportunities

Quality Service Delivery

1. Developing a Relationship With The Elderly
 - a. Identifying the client
 - b. Issue Spotting vs. Legal Advice and Representation
 - i. Appreciation of the vulnerability of the individual
 - ii. Recognizing inconveniences of the aging process
 - iii. Setting Realistic Expectations for Client's Participation
 - iv. Communication with Client
 - v. Facilitating third party referrals to the Title III B legal programs
 - c. Client Grievance Procedure
2. Limitations of the program
 - a. Eligibility Guidelines
 - i. Priority based eligibility
 - ii. Age based eligibility
 - iii. Program resources
 - b. Confidentiality
 - i. What information can be divulged and to whom
 - ii. When the client's well being is in jeopardy
 - iii. During monitoring by the Area Agency on Aging
 - iv. During monitoring by the State Unit on Aging
3. Technical Assistance
 - a. Knowing when to call for help
 - b. Who to call for help
 - c. What kind of assistance to expect
 - i. Other Legal Services Developers providers
 - ii. State Unit on Aging
 - iii. National Support Centers
 - iv. Administration on Aging

4. Outcome Measures
 - a. Reporting System
 - b. Uniformity vs. Individuality
 - c. Capturing the critical data
 - d. Management using the data

Working around and through barriers

1. Conflicts of Interest
2. Ethical Dilemmas
3. Politics

Reference Materials

Resources

APPENDIX 6

Biographical Sketches of Retreat Facilitators

Penelope A. Hommel, M.Sc., Co-Director
The Center for Social Gerontology (TCSG)

Ms. Hommel has been active in gerontology since 1966 and was one of the first gerontologists to specialize in legal rights for older persons. She developed and directed, at the University of Michigan Institute of Gerontology, one of the earliest university-based law and aging programs in the nation. She became director of The Center for Social Gerontology -- a non-profit research, training and social policy organization -- in 1985 and has since guided it to a position of prominence as a national support center in law and aging.

She established and became director of The Center for Social Gerontology (TCSG) -- a non-profit research, training and social policy organization -- in 1985, and has since guided it to a position of prominence as a national support center in law and aging. As a national support center, TCSG is known particularly for its efforts to build leadership capacity of state and area agencies to ensure high quality, high impact legal services for elders across the nation.

She writes extensively and conducts training across the country on both the delivery of legal services and substantive legal issues affecting older persons. She works on a wide range of elder rights issues, particularly on effective delivery of legal services targeted to older persons in social and economic need, and issues of guardianship, protective services and advance directives to protect autonomy of older persons in medical decision-making.

She has consistently identified and taken on cutting-edge initiatives, including: a landmark study of Michigan guardianship service agencies and development of *Model Standards to Ensure Quality Guardianship Services* published by the US House Select Committee on Aging, and a national research project which examined court processes and practices in the appointment of guardians. She is currently concluding a groundbreaking national research project to look at an emerging new service industry in the field of aging -- the provision of guardianship services as a business. In the early 1990s, she pioneered the use of mediation in guardianship cases, has conducted two

evaluative studies of guardianship mediation projects, and is now working to expand the use of mediation to assist family caregivers in addressing the multiple and complex decisions surrounding long term care and support to frail elders.

She is frequently invited to appear before Congressional and legislative committees and speaks frequently at conferences and training seminars.

APPENDIX 6 (cont.)

JAMES BERGMAN, J.D., CO-DIRECTOR,
The Center For Social Gerontology
ANN ARBOR, MI.

A lawyer by training and an advocate by instinct, he directed one of the nation's first elder law programs in the 1960's, served as Assistant Secretary in the first Cabinet-level Department of Elder Affairs in Massachusetts, was one of the "discoverers" of elder abuse, directs a national tobacco and elderly project, and for 30 years has specialized in law and aging.

Dawn Washington
Georgia Division of Aging Services
Atlanta, GA

Aging Services Team Leader for the Elder Rights and Advocacy Section of the GA Division of Aging Services (DAS). She manages the Elder Abuse and Consumer Fraud Prevention Program, including the Senior Adult Victims' Advocate Program and coordinates elder rights activities. She is a member of the Commission on Family Violence. She worked with former President Carter's Atlanta Project Common Access Task Force to develop a "one stop" eligibility process for individuals to apply for public benefits; developed GA's SHIP in 3/93 and directed it until 11/98; serves as the minority coordinator at the DAS enabling her to collaborate with minority organizations in GA to enhance outreach to older and disabled African Americans; and currently works on Medicare and Medicaid fraud and abuse issues as a member of the GA Consumer Task Force where she developed a Train-the-Trainer Module on *Health Care Fraud, Waste and Abuse*. She has a B.A. from Colby College, Waterville, Maine.

M. R. (Rick) Wingo, Jr.
Georgia Division of Aging Services
Atlanta, GA

M. R. (Rick) Wingo, Jr. is the Quality Advisor for the Georgia Division of Aging Services. He has been an employee of the State since April 1973 and has served in various capacities within the Georgia Department of Human Resources, first with the newly re-

organized department in the Commissioner's Office, and later with the Department's Budget Office, where he was a planner and manager of the planning section. In December 1983, he became part of the Director's staff in the Office of Aging, and then directed the Community and Program Support section, which was responsible for the functions of planning, reporting, information systems, program monitoring, and policies and procedures. As the Quality Advisor for the Division, he has helped implement hoshin planning, program measurement, and team building there.

APPENDIX 6 (cont.)

Mr. Wingo is a graduate of the University of Georgia (Bachelor of Arts in Political Science, 1966 and Master of Public Administration, 1973) and served in the University's Institute of Government's Field Services Division for a short time. He is a Vietnam veteran, having served two voluntary tours of duty as an Army intelligence officer. He resides in Atlanta with his wife and two daughters.