

# The Older Americans Act: Access To Justice For Those Over 60 In Nevada

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## National Attention for Legal Services

The Legal Services Corporation (*See* 42 USC § 2996b) has been in the national news as the current federal executive administration has sought to cut funding of civil access to justice programs to those otherwise unable to afford counsel. Separate and apart from the Legal Services Corporation, which was created in 1974, the Older Americans Act of 1965 was amended in the mid-1970s to include legal service provision for older persons. While the Legal Services Corporation was a publicly funded independent non-profit, the Older Americans Act approached legal services for older persons with an allotment of funds to states, proportional to their share of the older population, to then distribute, in part, through grants and the guidance of each state’s “legal assistance developer.” 42 USC § 3058j.

The legal assistance developer is tasked with ensuring:

1. State leadership in securing and maintaining the legal rights of older individuals;
2. State capacity for coordinating provision of legal assistance;
3. State capacity to provide technical assistance, training and other supportive functions to area agencies on aging, legal assistance providers, ombudsmen and other persons, as appropriate;
4. State capacity to promote financial management services to older individuals at risk of conservatorship;
5. State capacity to assist older individuals in understanding their rights, exercising choices, benefiting from services and

opportunities authorized by law, and maintaining the rights of older individuals at risk of guardianship; and

6. State capacity to improve the quality and quantity of legal services provided to older individuals. *Id.*

## Social (Not Just Economic) Need and Vulnerability

What is missing from the above parameters, and intentionally so, is any limitation on legal assistance on the basis of income—a departure from the Legal Services Corporation’s model of eligibility. Even the Nevada Supreme Court Rule relating to Interest Bearing Trust Accounts are by reference “for the purposes of providing legally related services to the poor [...]” SCR 216(1). Instead, “[a] legal assistance provider may not require an older person to disclose information about income or resources as a condition for providing legal assistance [...]” 45 CFR § 1321.71. This rule can make targeting services based on social and economic vulnerability a unique task.

Assembly Bill 31 in the 2017 legislative session (which passed the Assembly unanimously at the time of writing this article) seeks to bring Nevada a step further in compliance with federal mandates by designating a position in the Aging and Disability Services Division under the Nevada Department of Health and Human Services to, among other responsibilities, “[a]ct as the State legal assistance developer as described in 42 U.S.C. § 3058j.” Previously, the role had been assumed but not specifically codified. Having an attorney serving as the legal assistance developer allows

for consideration of the nuanced and multifactor approach to legal service provision.

In Nevada, a competitive grant process takes place every two years (the most recent cycle having completed application submission on March 21, 2017), allowing legal service providers to submit proposals outlining how they will continue to, or begin, provision of legal services to vulnerable adults of age 60 and older, without regard to their income or assets. The proposals are thoroughly reviewed and processed to ensure compliance with federal law and to hopefully impact older Nevadans as best as possible.

## State Legal Assistance/ Services Developer

The state legal assistance developer (also known as the legal services developer) is tasked with further ensuring that proposed plans look to “evaluating the capacity of a state’s legal services delivery system to consistently and reliably deliver high-quality, high-impact legal assistance to vulnerable elders when their basic human needs are at stake.” Best Practice Notes On Delivery of Legal Assistance to Older Persons, Vol 15., Nos. 3 & 4, March 2015. Guidance related to social needs of this population can also be found in 45 CFR § 1321.71, which, by way of example, discusses persons who need assistance with “public benefits, institutionalization and alternatives to institutionalization,” and those who are “institutionalized, isolated, and homebound.”

In a 2000 article in the *Illinois Bar Journal*, then-Illinois legal services developer Lee Beneze called this program a “well-kept secret.” *Senior Legal Assistance Services: A Well-Kept Secret* 88 Ill B.J. 411 (Jul. 2000). Those involved in aging agencies and service providers are, of course, aware of the guidelines of the Older Americans Act, but even those in private elder law practice may not be aware that they can direct individuals over the age of 60 to grant-funded providers in Nevada without a restriction on their income, as might be the case with referrals in other contexts. Private practitioners

should still make pro bono service a part of their client base, per NRPC 6.1(a), but part of serving vulnerable communities should include awareness of the services and contacts available to those seeking assistance.

## The “No Wrong Door” Approach

Within the Nevada Aging and Disability Services

Division, for example, there is a dedicated individual tasked with coordinating a “no wrong door” approach. This means that when a person contacts any part of the division, the goal is to guide that person to the correct point of contact for appropriate assistance. Lawyers in solo or even large firm practice could engage in this approach by directing contacts to recipients of Older Americans Act funding for legal services and contribute some time for follow-up to ensure the inquiring individual did get assistance. Sometimes, however, access to justice has little to do with actually going to court or filing a claim, but instead providing the unbundled service of a letter on law firm stationery or making a phone call for someone who may not be articulating their circumstances well enough to receive assistance.

In an era of tracking everything from steps taken in a day to logging billable time to meet monthly targets, 20 hours of aspirational time under NRPC 6.1 need not be burdensome, especially when ask-a-lawyer outreach opportunities through the Older Americans Act grant recipients in northern, southern and rural Nevada abound. Smaller interactions, such as ensuring intake staff doesn’t simply turn away a person seeking assistance, but instead directs them to resources readily available, can absolutely elevate access to justice and the image of attorneys among members of the community.

## Increasing Need for Service

This legislative session, guardianship has taken center stage as the recommendations of the Statewide Guardianship Commission chaired by Nevada Supreme Court Justice Hardesty have manifested in a number of bills in the Senate and Assembly. A major component of the commission’s recommendations has been what can be called a “civil Gideon,”

or representation for persons facing or under guardianship (soon to be shifted in statute from the pejorative “ward” to “protected person”), so that their due process rights can be safeguarded in light of substantially substituted decision-making secondary to court-determined incapacity.

Now, more than ever, legal service providers are being called upon to continue delivery of high quality, high compassion, pro bono service; the legal community at large should rise to the challenge as well. Luckily, funding under

the Older Americans Act can allow for leveraging efforts through public education and training. Private attorneys can facilitate the provision of reduced-fee or pro bono services to protected persons and proposed protected persons, or in the alternative, close any gaps that may be left when legal services providers shift focuses to answer the call of the judiciary and the legislature. **NL**

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