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June 9, 2011

The Honorable Herb Kohl  
Chair, Senate Special Committee on Aging  
United States Senate  
Washington, DC 20510

The Honorable Bob Corker  
Ranking Member, Senate Special Committee on Aging  
United States Senate  
Washington, DC 20510

Re: May 26, 2011 Hearing on Older Americans Act Reauthorization

Dear Chairman Kohl and Ranking Member Corker:

On behalf of the American Bar Association, with nearly 400,000 members nationwide, I commend the Special Committee on Aging for holding a hearing on May 26, 2011, on the reauthorization of the Older Americans Act. The ABA strongly supports reauthorization of the Older Americans Act, and we urge the Committee to amend the Act to improve the delivery of legal services to older Americans.

#### Legal Services under the Older Americans Act

Essential programs and services made possible by the Older Americans Act empower seniors to live independent, dignified lives by helping them understand and navigate essential income and health care options and to remain free of abuse, exploitation and neglect. Literally all older Americans benefit from Older Americans Act programs and services, but the impact is greatest on at-risk seniors -- those with the greatest economic and social needs. At-risk seniors include the over 5.2 million seniors living at or below the poverty level<sup>1</sup> and 3.3 million seniors who are geographically, socially or culturally isolated.<sup>2</sup> These seniors are at the greatest risk of being institutionalized, abused, exploited or neglected, particularly if they are unable to access income, health care and supportive services. For these seniors, legal assistance assures access to essential income, programs and benefits.

In the most recent year that data is available, Older Americans Act legal assistance helped an estimated 87,000 seniors navigate complex systems that provide income, health care, nutrition and housing, as well as resolve numerous other legal problems from debt collection to advance

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<sup>1</sup> Population 60 Years and Over in the United States, U.S. Census Bureau, 2008 American Community Survey.

<sup>2</sup> Crossing New Frontiers: Benefits Access Among Isolated Seniors, National Center for Benefits Outreach and Enrollment, Issue Brief, May 2011, [www.centerforbenefits.org](http://www.centerforbenefits.org).

care planning.<sup>3</sup> Without help, many at-risk seniors would fail to obtain or retain essential services that make it possible for them to live with independence and dignity. An examination of the need for legal assistance by older Americans living at or below the poverty level and the current service delivery capacity in late 2010 showed that the need for legal assistance by older Americans living at the poverty level is at least four times as great as the ability of the system to meet the need.<sup>4</sup>

### Nine Governing Principles

In August 2010, the ABA adopted a policy urging reauthorization of the Older Americans Act with increased priority to the delivery of legal services and elder justice in conformance with nine principles. We urge the Committee to consider these principles, which are intended to improve the structure of legal services delivery by simplifying and streamlining the fragmented process that currently characterizes the funding and oversight of legal assistance under the Act. They do not demand greater expenditures.

*Principle 1: Achieve the goal of creating a high quality, coordinated legal services delivery system in each state that prioritizes services for individuals with the greatest social and economic need as well as those at risk of institutional placement.*

The Act currently includes as a priority service the provision of legal assistance to those with the greatest social and economic need. The current system of delivering legal assistance under the Act involves over 1,000 separate provider contracts with no system to assure quality or coordination of legal assistance. This principle urges the creation of a coordinated legal assistance delivery system designed to provide high quality legal assistance to elders at the greatest risk of being institutionalized, abused, exploited or neglected if they are unable to access income, health care and supportive services. For these seniors, legal services assure access to essential income, programs and benefits.

*Principle 2: Fund legal services under the Act directly through a state entity designated by the Administration on Aging, rather than through Area Agencies on Aging.*

The current system delegates funding decisions to the local level, generally through a local or regional Area Agency on Aging. This results in over 1,000 separate provider agreements. Many legal aid programs have multiple contracts with different local agencies within their service area. The agreements lack uniform standards, contracts, and reporting or accounting standards, resulting in an undue administrative and reporting burden for the legal services providers. The aim of this principle is to urge moving the funding decision to the state level. This would allow for application of uniform standards for selection of the best qualified provider, service agreements, and reporting and accounting standards.

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<sup>3</sup> In Search of Adequate Funding, David Godfrey, BIFOCAL, Vol. 32 No. 2, October 2010 based on 920,397 number of hours of service reported and 10.6 average number of hours per case from LSC statistics.

<sup>4</sup> In Search of Adequate Funding, David Godfrey, BIFOCAL, Vol. 32 No. 2, October, 2010.

*Principle 3: Ensure that the state entity is qualified to plan and support a high quality, coordinated, legal services delivery system and has the capacity to allocate, monitor, and evaluate the use of funds.*

Statewide coordination of legal assistance programming under the Act will act to increase the level of oversight and accountability. Under this principle each state will have a statewide expert in the development of a high quality, coordinated, legal services delivery system with the capacity to allocate, monitor, and evaluate the use of funds and coordinate agreements with service providers. This change should result in improved oversight and accountability.

*Principle 4: Ensure adequate funding for legal services in each state, but in an amount not less than the state's Area Agencies on Aging had spent in the aggregate.*

As part of their state plans under the Older Americans Act, states are required to set a minimum percentage of funds for legal assistance programming and to ensure that adequate funding is committed. This principle recognizes that, if there is no maintenance of effort requirement imposed, there is a danger of a net loss in funding if contracting and funding authority for legal services are moved from the local Area Agency on Aging to the state level. This principle reflects the importance of ensuring that states spend at least as much as had been spent in the aggregate by the Area Agencies on Aging. This will provide a more effective and efficient use of resources, since the state entity is in a position to develop a comprehensive and coordinated plan statewide, rather than relying on piecemeal and fragmented local funding decisions.

*Principle 5: Fund national support centers composed of national organizations with expertise in law and aging to provide substantive expertise, materials development and dissemination, technical support, capacity building and training.*

The Administration on Aging supports national support centers that provide technical assistance, develop and promote evidence-based best practices, provide expert resource development, promote capacity building, and provide training and consultation services that tremendously boost the capacity of front line service providers. Through the national support centers, all providers have access to top experts resulting in greater efficiency in program development and service delivery. We urge the continuation of these vital programs.

*Principle 6: Utilize a national legal advisory committee including representatives of legal support centers to assist the Administration on Aging in the development of standards and procedures for both state entities that distribute or utilize funds and legal services providers who seek to be recipients of funding.*

We urge the creation of a national legal advisory committee, which would include representatives of the national legal support centers. The committee would assist the Administration on Aging in the development of standards and procedures for both state

entities that distribute or utilize funds and legal services providers who seek funding. This advisory committee would complement and supplement the expertise of Administration staff.

*Principle 7: Utilize uniform standards and procedures that build upon the ABA Standards for the Provision of Civil Legal Aid.*

We urge the development of service delivery and reporting standards. In establishing standards for the delivery of high quality legal services, the Administration on Aging is urged to use the ABA Standards for the Provision of Civil Legal Aid as a benchmark. These standards are designed to assure that the quality and ethical standards for civil legal aid programs conform to the highest standards of the profession while taking into account the limited resources of legal aid programming. Legal Services Corporation (LSC) case service reporting standards provide an accepted standard for data reporting. Collection of service data in the same format as LSC grantees will result in data that give us a much greater understanding of the scope of services and measurable outcomes.

*Principle 8: Refrain from imposing Legal Services Corporation Act advocacy restrictions on providers that are not LSC funded.*

In select instances, state and local decision makers intentionally choose to fund non-LSC service providers as Older Americans Act legal assistance providers. This decision may be made in the hope that the non-LSC provider will be able to provide services that LSC providers are prohibited from providing. The restrictions limit the kinds of clients and cases the programs can help and limit their ability to participate in the legislative process. We urge Congress to give states the flexibility to engage providers without imposing LSC restrictions on non-LSC legal services providers.

*Principle 9: Strengthen State Legal Assistance Developers by ensuring that they have the qualifications, authority and resources to exercise leadership in developing and supporting a high quality, coordinated legal services delivery system.*

For decades the Older Americans Act has required states to designate a person as a legal assistance (or services) developer. Effective developers identify key issues, develop service delivery capacity, produce training, and develop local resources. However, many states lack effective developers. Today many developers are only able to devote a part-time effort to the work and may not have authority and resources necessary to be effective in their work. We urge Congress to strengthen the position of legal assistance developer by asking the Administration to create guidelines for the qualifications of a person to serve as developer and best practices outlining the resources and authority that developers should have available to them. We urge Congress to take this opportunity to ask the Administration on Aging to establish standards for legal services developers and to encourage the Administration on Aging to reward states that fulfill the requirement of having an effective developer.

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Reauthorization is critical to the continuing operation of programs and services to our fast growing population of older Americans. Legal services can be a key access service that makes it possible for older Americans, especially the lowest income older Americans and seniors who are geographically, socially or culturally isolated, to attain and retain essential services and supports. These services and supports will allow them to live independently in their communities and remain free from abuse and exploitation. Reauthorization presents an opportunity to utilize the lessons we have learned from more than three decades of experience in supporting legal assistance under the Act and to improve its efficiency, focus, and quality. As the Committee moves forward with this discussion, we urge you to give increased priority to the delivery of legal services and elder justice in conformance with the nine principles outlined above.

Sincerely,

A handwritten signature in black ink, reading "Thomas M. Susman" with a long horizontal flourish extending to the right.

Thomas M. Susman

cc: Members of the U.S. Senate Special Aging Committee