

Elder Benefit Specialist Program

ADRC Operations Manual

1. Legal Authority

Legal authority for Wisconsin's Legal-Assistance/Benefit-Specialist Program derives from federal law and regulation and from state law.

1.1 Federal Law

Older Americans Act (OAA) of 1965, as amended (42 U.S.C. 3001 et. seq.)

1.1.1 Funding of Legal Assistance

42 U.S.C. 3026(a)(2)(C) – Legal assistance is a priority service under the OAA. This means that funding of legal assistance by each area agency on aging (AAA) is mandatory, and services must be accessible and available throughout each planning and service area (PSA) in Wisconsin.

1.1.2 Definition of Legal Assistance

42 U.S.C. 3001(31) - Legal assistance is defined in the OAA as *"legal advice and representation provided by an attorney to older individuals with economic or social needs, including to the extent feasible, counseling or other appropriate assistance by a paralegal or law student under the supervision of an attorney, and includes counseling or representation by a non-lawyer where permitted by law."*

1.1.3 Assurances

42 U.S.C. 3027(a)(11) - With respect to legal assistance, all state plans must contain all of the following assurances:

- (1) that area agencies on aging will do all of the following:
 - (A) enter into contracts with providers of legal assistance which can demonstrate the experience or capacity to deliver legal assistance

- (B) include contract provisions that subject the provider of legal assistance to OAA regulations
- (C) attempt to involve the private bar in legal assistance, including furnishing services to older individuals on a pro-bono and reduced-fee basis
- (2) that both of the following will be true:
 - (A) No legal assistance will be furnished unless the provider's program is designed to serve older individuals with social or economic need.
 - (B) If the provider is not a Legal Services Corporation (LSC) grantee, the provider must agree to coordinate its services with existing LSC projects in order to concentrate OAA funds on individuals in the greatest need, and the area agency must make a finding that the provider selected to receive OAA funds is the entity best able to provide the particular services.
- (3) that the state agency is to provide for coordination of legal assistance services, and provide advice and technical assistance in the provision of legal assistance and support the furnishing of training and technical assistance
- (4) that to the extent practicable, OAA-funded legal assistance will be in addition to any legal assistance for older individuals being furnished with non-OAA funds (e.g., LSC funds) and that reasonable efforts will be made to maintain existing levels of legal assistance for older persons
- (5) that area agencies on aging give priority to legal assistance related to income, health care, long-term care, nutrition, housing, utilities, and protective services, defense of guardianship, abuse, neglect and age discrimination

1.1.4 Confidentiality of Legal Services

As defined in 42 USC 3026(d), 3027(f) and 3058d(b), no state, state agency, or area agency may require any legal-assistance program to reveal any information which is protected by the attorney-client privilege. Confidentiality of client-specific information is discussed in Section 11.6 of this chapter.

1.2 Federal Regulations

Federal regulations add additional requirements for legal services beyond those in the Older Americans Act itself.

1.2.1 Standards for Legal-Services Providers

45 CFR 1321.71 specifies standards for legal-services providers. The legal-services provider selected by the area agency must meet all of the following requirements:

- (1) have expertise in the areas of law affecting persons in economic and social need
- (2) have the capacity to provide effective administrative and judicial representation in such areas
- (3) have the capacity to support other advocacy efforts for those in economic and social need
- (4) have the capacity to serve persons who are institutionalized, isolated or homebound
- (5) have the capacity to provide service in the principal foreign language used in areas where a significant number of potential clients do not speak English as a principal language
- (6) not require an older person to disclose information about income or resources, but may ask for such information when needed to assist a client or potential client
- (7) not accept fee-generating cases except where other adequate representation is unavailable (discussed in Section 11.2(8) of this chapter)
- (8) not use OAA funds to support political activities or engage in lobbying
- (9) while carrying out legal-services activities funded by the OAA, not engage in a public demonstration, picketing, boycott or strike except as permitted by law in connection with the employee's employment; nor direct, encourage or coerce others to do so
- (10) not use OAA funds to pay dues exceeding \$100 per person per year to any organization, except a bar association, engaged in activities prohibited under OAA regulations, except if the dues are not used for such activities

1.2.2 Standards for Confidentiality and Disclosure of Information

45 CFR 1321.51 specifies standards for confidentiality and disclosure of information. The state agency must ensure that no information about an older person or obtained from an older person by a service provider or the state or area agency, is disclosed by the provider or agency in a form that identifies the person without the informed consent of the person or their legal representative, unless required by court order.

1.3 State Law

1.3.1 Duties of the Elder Benefit Specialist

Wisconsin Statutes, s. 46.81, provides authority for the allocation of state funds to county or tribal elder benefit specialist (EBS) programs and supervising attorneys. It defines the duties of the EBS as follows:

"Benefit Specialists shall offer information, advice and assistance to older individuals related to individual eligibility for, and problems with, public benefits and services and to health care financing, insurance, housing and other financial and

consumer concerns. Benefit Specialists shall refer older individuals in need of legal representation to the private bar or other available legal resources."

2. Program History

A 1975 amendment to the OAA included legal services as a priority service under Title III-B. The EBS program began in 1977 under the auspices of the Center for Public Representation as a pilot in seven southern Wisconsin counties. In 1983 it was one of two state models from which counties could choose for providing legal services; by 1987 all 72 counties had adopted the EBS program model. In 1985 elder benefit specialists formed their own organization, the Wisconsin Association of Benefit Specialists. The 1987-89 state budget included statutory language mandating the program statewide and allocating state funds (GPR) to support the program beginning in 1988. The 1989-91 and 1991-93 state budgets included very modest increases in funding. As part of an elder-rights initiative, the 1997-99 state budget included a more substantial increase.

In 1989 the Bureau secured grant funds for a study of the civil legal needs of economically vulnerable older Wisconsin residents and the effectiveness of the EBS program in meeting those needs. The results were published in 1991 (the "Spangenberg Report") and the study remains one of the most thorough and rigorous evaluations ever of an OAA legal-services program. The report found that the EBS program was effective in meeting benefit-related legal needs but was seriously underfunded; the report made a number of recommendations for improving the program. One was to develop these program policies, which were issued in 1992. The policies were revised in 2004 and 2008.

3. Program Purpose

The purpose of Wisconsin's EBS program is to provide, through a continuum of county and tribal-based EBS services and area-wide legal-advocacy services, broad access to benefits, entitlements, and legal rights for large numbers of older persons throughout Wisconsin. The program promotes and preserves the autonomy, dignity, independence and financial security of older persons as follows:

- (1) by informing and assisting large numbers of older persons in understanding their rights, benefits and entitlements
- (2) by limiting the scope and nature of benefit problems experienced by older individuals through prevention, early detection, and intervention
- (3) by assisting older individuals in securing benefits and entitlements, and in asserting and maintaining rights promised and protected by law

- (4) by providing access to the system of justice by offering advocacy, advice and representation to older persons as clients, and by utilizing litigation, legislative and administrative reform
- (5) by initiating advocacy, which has consequences of broad significance in preserving, protecting and expanding the rights and benefits of older persons

In addition, EBS programs are to do all of the following:

- (1) target especially those who are most economically and socially needy
- (2) identify and address priority issues which reflect local needs of the target population, with particular attention to those issues specified in Section 5 of this chapter
- (3) be accessible throughout each planning and service area
- (4) develop and maximize the use of other resources to expand the provision of legal and benefit assistance to older persons, including the use of volunteers, *pro-bono* panels, and reduced-fee *referral* panels where appropriate

These policies and procedures first establish responsibilities for targeting and priority-setting by the benefit specialist program. They then establish the responsibilities and division of responsibilities among the key organizations/individuals in the program: the Bureau of Aging and Disability Resources, area agencies on aging, county and tribal aging units, supervising attorneys, elder benefit specialists and the Board on Aging and Long-Term Care.

4. Targeting Resources

Recognizing that resources are limited, EBS services must be targeted to the most vulnerable groups of elders. The OAA specifies several groups, including those in greatest social need, those in greatest economic need, low-income minorities and rural elders. The OAA defines "greatest economic need" as the need resulting from income at or below the poverty level. "Greatest social need" is defined as the need caused by non-economic factors, which include physical and mental disabilities, language barriers, and cultural, social, or geographical isolation including that caused by racial or ethnic status, which restricts an individual's ability to perform daily tasks, significantly reduces the quality of an individual's life, or threatens such individual's capacity to live independently.

Consistent with OAA priorities and local and regional determinations of greatest need, the following groups should receive priority in outreach and service delivery:

- low-income older persons
- older persons living alone

- elders with chronic health problems
- elders with problems of access to health care
- homeless elders
- elders with language barriers
- homebound or physically isolated elders
- American Indian elders, African American elders, Hispanic elders, Hmong and other Southeast-Asian elders, Russian elders
- immigrant elders

5. Establishing Priority Issue Areas

The EBS program will give priority to the legal/benefit issues which are particularly important for the socially and economically needy groups described in Section 4 of this chapter. These are primarily issues that address ensuring basic needs for income, health care, housing, food and access to needed long-term care; and avoiding, reducing or remedying burdensome debt or financial exploitation.

County or tribal EBS programs will focus their services primarily on these significant issue areas, giving greatest attention to those priority issues which reflect particular local needs. In many cases the EBS will be the primary agent for meeting these needs; in some other cases the EBS may be involved but may refer the client to someone else who is the primary source of assistance.

The EBS program will directly provide services to address the issues listed below unless the program can demonstrate to the area agency on aging and BADR that another provider is delivering the service in accordance with Section 9 of this chapter.

5.1 Health Insurance and Access

Medical Assistance:

- Categorically Needy
- Deductible
- Disability
- Medicare Savings Programs
- Spousal Impoverishment Protection
- Benefit Coverage Issues
- Lien/Estate Recovery

- Purchase Plan (MAPP)

Medicare:

- Part A
- Part B
- Part C (Medicare Advantage) - Coverage Issues
- Part D

SeniorCare

Badger Care Plus Core Plan (denials or reduction in benefits)

Low Income Subsidy (LIS)

Other Prescription Drug Assistance Programs

Medicare Supplement Insurance Coverage Issues

Other Health Insurance Coverage Issues

Medical Debt Remediation

Long-Term Care Insurance Coverage Issues

5.2 Income Support

Food Share

Social Security Retirement Benefits

Social Security Disability Benefits (consistent with policy on fee-generating cases); see Section 1.2 (8) of this chapter

Social Security Widow/Widower Survivor's Benefits

Supplemental Security Income (SSI) and State Supplement

SSI Disability

SSI Exceptional Expense Supplement

Social Security/SSI Overpayment Issues

Railroad Retirements Benefits

Universal Service Fund

5.3 Community-Based Services

Community Options Program (COP)

Home and Community-Based Medicaid Waiver Programs:

- Community Options Program, Waiver (COP-W)

- Family Care
- Family Care Partnership
- Include, Respect, I Self-Direct (IRIS)

See Section 12 of this chapter.

5.4 Housing / Utilities

Wisconsin Home Energy Assistance Program (WHEAP)

Wisconsin's Weatherization Assistance Program

(Disputes and appeals only. No applications.)

Subsidized Housing Access/Tenant Rights

Utility Shutoffs/Unpaid Utility Bills

Housing Repair/Improvement Loans and Grants

Homestead Tax Credit Appeals*

Landlord/Tenant/Evictions/Security Deposit Return

Property Tax Deferral Program

* Refer Homestead tax credit appeals to the legal-assistance provider. Note that if the county or tribe chooses to make Homestead tax credit *applications* part of the elder benefit specialist's priorities, the county or tribe will be responsible for providing trainings in this area and the county or tribe will also accept liability for any errors; the legal-assistance provider does not provide trainings, nor does it offer liability protection for erroneous Homestead tax credit applications.

5.5 Consumer

Debt-Collection Practices

5.6 Other

Benefit Checkup

In the delivery of services, EBS programs may provide services for issues not listed above if the individual's circumstances or the merits of the case are such that serving the individual would fit within the program's overall purposes. Elder benefit specialists must consult with the supervising attorney in this circumstance.

While EBS programs must demonstrate the capability, at minimum, of providing at the local level all of the above services, these program policies and procedures do not require programs to deliver such services beyond their budgetary capabilities. Caseloads may be limited to ensure the quality and timeliness of advocacy assistance.

Elder benefit specialists should note that the listing of priority issues does not preclude elder benefit specialists from making referrals of issues outside the list to a supervising attorney or providing assistance to supervising attorneys providing direct representation to areas not listed. If the referral(s) relate to issues covered under the Older Americans Act, the legal-assistance provider will decide whether or not to take the case, based on their workload and other considerations.

6. Techniques for Reaching Targeted Groups and Addressing Priority Issues

Targeting is a commitment to serving those elders most in need. Priority-setting identifies and prioritizes the types of cases/problems the local program will or won't handle. In order to reach targeted groups and to ensure that the local programs are addressing priority issue areas, all of the following must be in place:

- a planned and coordinated approach to provide easily accessible services to targeted groups
- an outreach and program publicity
- community education

As part of the periodic review of the local EBS program by the supervising attorney, the EBS and the county or tribal aging unit director (or other agency directors employing the EBS) will review the accessibility of the local program and the adequacy of outreach and community education by the program. They will jointly develop a plan for effecting needed improvements. This activity may also be undertaken at other times of the year. Such evaluation and planning will address adequacy in each of the following areas:

6.1 Accessibility

Elder benefit specialist services will be planned so that, to the extent possible, they are easily accessible to older persons, particularly within the identified target populations. Relevant considerations include such things as location of the office and intake

sites, availability of public transportation, hours, safety of the neighborhood, toll-free telephone access for clients, opportunity for staff to provide home visits and circuit-riding in rural areas.

6.2 Outreach

The periodic review will consider the extent to which specific approaches and techniques are being or should be used to make potential clients, particularly those in the targeted populations, aware of the advocacy services available through the program and of the ways in which services can be of value to them. The EBS, with the input and review of the supervising attorney and county or tribal aging unit director, will develop strategies to ensure that services are targeted, and that appropriate outreach is undertaken by the EBS.

Outreach activities and publicity materials must be designed so as to clearly define EBS services as advocacy services. This may include information and assistance with the paperwork related to benefits and insurance claims, but will be focused on problem solving, complaint resolution and client representation.

6.3 Community Education

Informing elders of their legal rights in community education forums, e.g., presentations, workshops, radio or television shows, newspaper or newsletter articles; and planning education activities around the target populations and the priority issue areas, are essential to local EBS programs. Community education programs will, therefore, be jointly planned and reviewed annually by the aging unit director, the supervising attorney and the EBS.

7. Responsibilities of the Bureau of Aging and Disability Resources

The Bureau of Aging and Disability Resources (BADR) has overall responsibility to provide leadership so that area agencies on aging, supervising attorneys, aging units, elder benefit specialists, and the Board on Aging and Long-Term Care ombudsmen and Medigap counselors are most effectively implementing coordinated and vigorous advocacy efforts to protect and enhance the rights, benefits and entitlements of older persons throughout Wisconsin. Duties and responsibilities of BADR are as follows:

- (1) Provide state leadership in ongoing development of a statewide system to secure and maintain legal rights, benefits and entitlements of older persons.
- (2) Provide state leadership in defining the scope of the EBS program and delineating the roles of the supervising attorneys and the elder benefit specialists.

- (3) Coordinate the provision of EBS services throughout the state.
- (4) Provide state leadership in expanding the quality and quantity of legal and advocacy assistance for older persons with economic and social needs.
- (5) In conjunction with supervising attorneys, area agencies, elder benefit specialists and aging unit directors, operate the EBS program in a manner consistent with Wisconsin's Rules of Professional Conduct for Attorneys (Supreme Court Rules, Chapter 20) adopted by the Supreme Court of Wisconsin and the American Bar Association's Canons of Ethics.
- (6) Provide for an appropriate division of responsibility and effective coordination of services, in conjunction with the Board on Aging and Long-Term Care and other interested parties, among the EBS program, the Medigap Helpline and the long-term-care ombudsman program.
- (7) Establish minimum annual funding levels for area agencies to use in contracting for legal backup and training.
- (8) Provide information to the Wisconsin aging network on the unmet legal and advocacy needs of older individuals with respect to elder rights, benefits and entitlements.
- (9) Provide periodic review, updating, technical assistance and training on these program policies and procedures.
- (10) Ensure implementation of any federal or state reporting requirements.
- (11) Coordinate the EBS program with activities funded under and requirements of the state health insurance assistance program (SHIP).
- (12) Coordinate the EBS program with other programs operated by the aging and disability resource centers (ADRC's).
- (13) Consult with the supervising attorneys, county or tribal aging unit directors, elder benefit specialists, the Board on Aging and Long-Term Care and other interested parties as needed, on issues relevant to the operation of the EBS program.
- (14) Provide information to the various components of the EBS program and, where appropriate, the broader aging network on public benefits issues and developments.
- (15) Formulate and advocate for proposals to improve public benefit and insurance policies and programs affecting older persons.

8. Responsibilities of Area Agencies on Aging

Area Agencies on Aging (AAA's) contract with legal-assistance providers and with county or tribal aging units for EBS services. In so doing, they provide leadership relative to the EBS program in their planning and service areas. This leadership must extend to overall planning, advocacy, and coordination of services, interagency linkages, information sharing, monitoring, and support to ensure the integration of legal assistance services into the rest of the aging network. Duties and responsibilities of area agencies are as follows.

8.1 Contract with a Legal-Assistance Provider

- (1) AAA's must provide funding for legal assistance and training services under Title III-B of the OAA and under state general purpose revenue (GPR) at least at the minimum funding levels established by the Bureau. The regional legal-services allocation is a restricted allocation and will be used exclusively for the legal-assistance contracts.
- (2) AAA's will ensure that the level of legal assistance services in the planning and service area (PSA) is adequate given the number of elder benefit specialists and the size of the eligible population. If this is not possible because of resource constraints, the AAA will ensure legal-assistance coverage as close to adequate as is possible with available resources.
- (3) AAA's will enter into contracts with the legal-assistance provider which is best able to demonstrate the experience and capacity to do all of the following:
 - (A) meet the requirements of federal and state law and regulations as well as the requirements of these program policies and procedures
 - (B) train and supervise the elder benefit specialists throughout the PSA
 - (C) assist the elder benefit specialists in recognizing and referring cases that need judicial representation
 - (D) provide effective, high-quality administrative and judicial representation for eligible individuals, at least in the priority issue areas set forth in Section 5 of this chapter
 - (E) be available to work with elder benefit specialists and provide client representation throughout the planning and service area
- (4) AAA's will ensure that the supervising attorney has adequate malpractice insurance.
- (5) AAA's will ensure that supervising attorneys can demonstrate that all elder benefit specialists receive adequate training in the following: program policies and procedures, the ethics of working with clients, how to work effectively with older clients, and the priority areas of law listed in Section 5 of this chapter.
- (6) Prior to requesting proposals for legal-assistance services, AAA's will perform a confidential written survey of elder benefit specialists in their PSA to obtain their evaluation of the incumbent supervising attorney. The results will be shared with the current provider, who will be given an opportunity to comment.
- (7) When selecting a supervising attorney, AAA's will use a request-for-proposal (RFP) process that meets the requirements of this manual. Where the AAA is a county agency, it may instead use a process that meets county procurement standards.

8.2 Contract for Elder Benefit Specialist Services

- (1) AAA's must contract with county or tribal aging units to provide, either directly or through purchase by the county or tribe, EBS services. Where the county agency or tribe does not wish to operate an EBS program in accordance with these policies, the AAA will contract with a private, non-profit social agency or a supervising attorney that is willing to do so.

- (2) AAA's will ensure that county or tribal agencies do not reduce the amount of Title III-B funds and GPR funds used by county or tribal aging units to provide EBS services unless the county or tribal agency has a waiver granted by the Bureau of Aging and Disability Resources (BADR).
- (3) AAA's will ensure that Title III-B funds, state GPR funds, and other funds used to contract for EBS services, are not used to supplant funds from other federal or non-federal sources unless a waiver has been granted by BADR.
- (4) AAA's will ensure that the employer of the EBS provides appropriate and adequate general-liability and malpractice insurance for the EBS.
- (5) AAA's will ensure that EBS job descriptions include participation in training and roundtable case discussions organized by the supervising attorney.

8.3 Program Planning and Coordination

- (1) AAA's will promote the development and improvement of EBS services and legal services for older adults in general in the planning and service area, including working with the legal-assistance provider and elder benefit specialists to expand legal resources by stimulating private bar involvement, especially through the establishment or expansion of pro-bono and reduced-fee lawyer referral panels, particularly for wills and advance directives.
- (2) With the county or tribal aging unit and supervising attorney, AAAs are encouraged to participate in the hiring of elder benefit specialists in counties within the AAA area. AAA's will participate in reviewing the EBS job description.
- (3) AAA's will work with county or tribal aging unit directors and elder benefit specialists in their development of local program plans for reaching the target populations and addressing the priority needs set forth in Sections 4 and 5 of this chapter, and in identifying other emergent target populations and needs.
- (4) AAA's will support EBS programs by obtaining, through the area plan process, input on the training and support needs of elder benefit specialists and will work with BADR to ensure that elder benefit specialists in their area are able to take advantage of relevant training opportunities.
- (5) AAA's will disseminate information regarding elder-rights advocacy issues, regularly and as needed, to the EBS program and to other elder advocacy programs in the PSA.

8.4 Program Monitoring and Problem-Solving

- (1) AAA's must monitor the supervising attorney to assess compliance with the contract and with these program policies and procedures and will work with the supervising attorney (and others as needed) to address concerns that arise.
- (2) Each AAA must ensure that its EBS program has in place a method for surveying client satisfaction and needs, and for obtaining and considering the views of older persons about the operation of the program.

- (3) AAA's will ensure that their EBS programs give clients a voluntary opportunity to contribute to the cost of the services while ensuring privacy with respect to the contribution. Where the opportunity to contribute to the program is provided through one-on-one solicitation, this will be indicated only after services have been completed; additionally, the method by which the opportunity to contribute is announced may not discourage future utilization of the service by the client or other potentially eligible individuals.
- (4) AAA's must offer consultation and problem-solving to EBS programs as needed or requested and will bring issues to the attention of BADR's legal-services developer when appropriate.
- (5) AAA's will include the EBS program in their reviews of aging units and must maintain client confidentiality in any such review. As part of such reviews, a written report will be given to the county or tribal aging-unit director and elder benefit specialist(s).
- (6) AAA's will work with EBS programs to ensure that any state or federal reporting requirements are met in a timely and accurate fashion.

8.5 Program Integrity

Area Agencies on Aging will do all of the following:

- (1) ensure that no information is required of the supervising attorney or elder benefit specialists in the monitoring or reporting processes that would violate client confidentiality
- (2) in conjunction with supervising attorneys, area agencies, elder benefit specialists and aging unit directors, ensure that EBS programs in the PSA operate in a manner consistent with Wisconsin's Rules of Professional Conduct for Attorneys (Supreme Court Rules, Chapter 20)
- (3) ensure that there will be no interference by a county, tribe, or ADRC in the conduct of an EBS responsibly carrying out their duties as specified in the EBS job description and in these policies, and that there will be no attempt by a county, tribe, or ADRC to influence an elder benefit specialist's actions in any case in which the county, tribe, or ADRC is a party when such interference would be detrimental to the elder benefit specialist's client
- (4) ensure that counties, tribes, and ADRCs have strict policies and procedures for maintaining client confidentiality. These must apply to the EBS as well as all agency staff or volunteers whose services are used to support the elder benefit specialist's representation of clients
- (5) ensure that if the duties of the EBS are shared by any other county, tribal, or ARDC staff person (support or supervisor), that person will be adequately trained and governed by the same rules, including rules pertaining to confidentiality and conflict of interest

9. Responsibilities of Legal-Assistance Providers

Legal-assistance providers are responsible for providing direct legal services under the Older Americans Act using Title III-B and state GPR funds from an area agency on aging. The attorney is also responsible for providing supervision and training of the elder benefit specialists within the PSA and for taking referrals from elder benefit specialists when cases require an attorney.

9.1 Program Operation

- (1) Supervising attorneys may consult with county or tribal aging units (and the AAA when a county or tribal aging unit has requested the AAA's involvement) in the hiring of elder benefit specialists in competitive situations. This consultation may include, but is not limited to, review of the EBS job description and participation in the applicant screening or applicant-interview process when permitted under county or tribal personnel rules. The type of involvement will be decided between the supervising attorney and the county or tribal aging unit or another agency employing the EBS.
- (2) With respect to supervision of the elder benefit specialists, both the supervising attorney employed by the legal-assistance provider and the county or tribal aging unit director have certain responsibilities. In matters regarding compliance with county or tribal work rules and performance unrelated to the substance of the EBS program, supervision is the responsibility of the county or tribal aging unit director or another agency director employing the EBS. The legal-assistance provider and supervising attorney will do all of the following:
 - (A) have sole responsibility for supervision of elder benefit specialists on substantive legal issues and client-related matters
 - (B) provide direct case supervision
 - (C) provide on-call telephone and e-mail assistance as needed
 - (D) provide periodic performance reviews of each EBS. The supervising attorney will communicate a reasonable amount of time in advance with the aging unit director or other agency director employing the EBS regarding an upcoming, on-site review of the EBS and will provide the opportunity for a meeting with the director to discuss issues and concerns about the program or the elder benefit specialist's performance.
 - (E) provide proactive, individualized supervision to elder benefit specialists on a regular basis by telephone or e-mail, subject to the limits of available funding
 - (F) provide regular review and supervision of case acceptances, individual case handling, and the closing of cases
- (3) The legal-assistance provider will work with the area agency on aging and county or tribal aging unit to ensure that all elder benefit specialists are covered by appropriate and adequate liability and malpractice insurance.
- (4) Legal-assistance providers will have adequate malpractice insurance for their staff.
- (5) The legal-assistance provider will conduct a limited number of regional public-education programs or develop resources for use locally on topics of particular concern to elders in the service area, relying largely on the elder benefit specialists and

other organizations to conduct local public-education programs so as to maximize the limited resources of the legal-assistance program.

- (6) Legal-assistance providers will provide a full range of legal advocacy services, including litigation, administrative reform, legislative advocacy and other advocacy within the limits of applicable federal and state law and regulations.
- (7) Legal-assistance providers will, subject to available funding, provide effective, high-quality administrative and judicial representation for eligible individuals in the priority issue areas specified in Section 5 of this chapter, except where the provider can demonstrate to the satisfaction of the AAA, with input from the state legal-services developer, that another provider is delivering the service adequately to older persons.
- (8) Legal-assistance providers will be responsible for determining if a case is meritorious.
- (9) Legal-assistance providers will use Title III-B funds, state elder-benefit-specialist funds and other funds as contracted for from the AAA for legal backup, and training to serve the populations and purposes described in these policies and may not use Title III-B or state GPR funds to supplant funds from other sources.
- (10) As required in the Older Americans Act and its regulations, legal backup providers may not condition the provision of Title III-B-funded legal assistance to any person 60 years of age or older on their level of income or assets. The provider may only question the client about financial circumstances as a part of the process of providing legal advice, counsel and representation and for the purpose of identifying additional resources to which the client may be entitled.
- (11) As required in the OAA regulations, legal-assistance providers will give clients an opportunity to contribute to the program while ensuring privacy with respect to the client. The opportunity to contribute must be indicated only after services have been completed; the method of announcing the opportunity to contribute must not discourage future utilization of the service by the client or other potentially eligible individuals.
- (12) Legal-assistance providers will have ready access to the following for all appropriate staff: relevant federal laws and regulations; local ordinances; relevant state laws and regulations; manuals for relevant government programs; relevant support-center manuals; newsletters; information and referral manuals; and a law library.
- (13) Legal-assistance providers must demonstrate, as required in the OAA, the capacity to provide legal assistance in the principal language spoken by clients in areas where a significant number of clients do not speak English as their principal language. For purposes of this requirement, this means that the legal-assistance provider and elder-benefit-specialist program in Milwaukee County must be able to provide assistance in Spanish. This requirement may be met through the availability of interpreters or translation services.
- (14) Legal-assistance providers must provide clients with a mechanism for filing complaints or grievances about the operation of the program or about denial of service.

9.2 Staffing and Training

- (1) With respect to training of elder benefit specialists, the legal-assistance provider will do all of the following:
 - (A) provide elder benefit specialists, within two months of being hired, written guidance or training on case-handling procedures and program procedures; and introductory training on public benefits within three months of being hired
 - (B) develop an annual calendar that specifies which topics will be addressed subject to changes throughout the year and emergent needs. Prior to finalizing the calendar, the legal-assistance provider will give both elder benefit specialists and aging unit directors, or other agency director employing the EBS, the opportunity to suggest topics for future EBS training. Final decisions on training will be the exclusive responsibility of the legal-assistance provider. The legal-assistance provider will prepare and disseminate agendas of individual training programs to both the county and tribal aging unit directors, another agency director employing the EBS, and elder benefit specialists prior to each training program. Training will be provided on legal/advocacy skills and on substantive areas of the law.
 - (C) ensure that program staff receives orientation and training on the Wisconsin aging network and the Older Americans Act from the Bureau of Aging and Disability Resources.
- (2) With respect to training of legal-assistance provider staff, the legal-assistance provider will do both of the following:
 - (A) ensure that all staff has experience and training in the priority areas of law set forth in Section 5 of this chapter or propose a plan for obtaining such training
 - (B) develop mechanisms for keeping provider staff current in the priority areas of law indicated in Section 5 of this chapter
- (3) With respect to staffing, legal-assistance providers will do all of the following:
 - (A) have the capacity to provide advice and representation in the areas of law outlined in Section 5 of this chapter
 - (B) have lawyer staff licensed to practice law in the State of Wisconsin and carry adequate malpractice insurance
 - (C) have lawyer/paralegal staff that have experience and training, or propose a plan for obtaining training, in the priority areas of law set forth in Section 5 of this chapter

9.3 Planning and Coordination

- (1) The legal-assistance provider will have primary responsibility for the development and expansion of pro-bono legal resources for the elder and will work cooperatively with the counties or tribe's elder benefit specialists and AAA in this effort.
- (2) Legal-assistance providers will work with the AAA, the counties, the tribes, and the elder benefit specialists and will obtain input from the state legal-services developer to assess and develop local program plans for reaching the target populations and for addressing the priority needs set forth in Section 4 and Section 5 of this chapter.

- (3) Legal-assistance providers will develop written protocols for coordination of services with the local Legal Services Corporation (LSC) program if the provider is not an LSC-funded program.
- (4) Legal-assistance providers will coordinate with the Board on Aging and Long-Term Care's ombudsmen in order to reach and provide services to residents of long-term-care institutions and long-term-care programs consistent with the division of responsibility provided in Section 12 of this chapter.
- (5) Legal-assistance providers will coordinate with the Board on Aging and Long-Term Care's Medigap Helpline to ensure appropriate referrals between the Medigap Helpline and the EBS program, consistent with the division of responsibilities provided in Section 13 of this chapter.

9.4 Monitoring and Quality Assurance

- (1) Legal-assistance providers have the primary responsibility for review of EBS programs, with program reviews to occur annually for each local program, unless the legal-assistance providers and aging unit director agree that less frequent review is appropriate.
- (2) Whenever an EBS program is assessed or the performance of an individual EBS is reviewed, a report must be given to the county or tribal aging unit director (and/or other agency director employing the EBS) and to the elder benefit specialist(s). The report on the annual performance review will be in writing. To the extent possible, the timing of the review will be coordinated with the county or tribal aging unit or other agency director employing the EBS; this will ensure that the EBS's results are available for performance review by the county or tribal agency or another agency director employing the EBS.
- (4) The legal-assistance provider will keep the county or tribal aging unit director informed of substantive performance problems or concerns regarding the operation of the EBS program; and will consult with the aging unit director (or other agency director employing the EBS) regarding problem resolution, as consistent with the applicable rules of professional conduct.

9.5 Program Integrity

Legal-assistance providers must do all of the following:

- (1) abide by Wisconsin's Rules of Professional Conduct for Attorneys, adopted by the Wisconsin State Supreme Court to regulate the practice of law (see Chapter 20 of the Wisconsin Supreme Court Rules)
- (2) have a protocol and a program policy for referral of fee-generating cases
- (3) not represent a client if doing so entails a conflict of interest
- (4) have a written conflict-of-interest policy which, at a minimum, will include provisions for identifying and addressing conflicts for employment and other activity outside the EBS program that will extend to all persons employed full-time or

part-time or on a volunteer basis for the EBS program. The purpose of the policy will be to protect clients from potential compromises of claims due to an inability to exercise independent professional judgment on behalf of a client as required by Wisconsin's Rules of Professional Conduct for Attorneys (see Chapter 20 of Wisconsin Supreme Court Rules).

- (5) review all cases of the EBS which involve the county or tribe and are likely to be particularly high-impact or controversial cases within the county or tribe and will alert the county or tribal aging-unit director to such cases consistent with applicable rules of professional conduct. The legal-assistance provider will also determine if the supervising attorney needs to take over the handling of the case so that the EBS is not in a conflict-of-interest situation.
- (6) consult with BADR on BADR's development and issuance of policies.
- (7) maintain confidentiality of all records and information, including identities of clients, in accordance with Wisconsin's Rules of Professional Conduct for Attorneys, the Older Americans Act and applicable federal and state case law.

10. Responsibilities of County and Tribal Aging Units

The county or tribal aging unit, aging and disability resource center (ADRC), human-services agency or other agency either employs or contracts for EBS services and, as such, plays an integral part in the EBS program. The ADRC, human-services agency or other agency provides supervision of the elder benefit specialist(s) on all issues related to compliance with county or tribe and agency work rules and on issues regarding worker efficiency and task management. The director shares with the supervising attorney supervision regarding caseload size and methods of obtaining stated program objectives. In this section, when the EBS program is contracted out, the term "county or tribal aging director" means the person with supervisory responsibility in the contract agency.

10.1 County or Tribal Program Operation, Staffing and Training

- (1) County and tribal aging units will have responsibility for hiring and firing elder benefit specialists, and when there is a competitive process, will consult with the legal-assistance provider (and may consult the AAA) in hiring. The county aging unit director will inform the legal-assistance provider and the legal-services developer at the state level within two weeks after hiring a new EBS.
- (2) When hiring new elder benefit specialists, county and tribal aging units and contract agencies will select a person who meets the qualifications in Section 11.3 (1) of this chapter.
- (3) With respect to supervision of the elder benefit specialists, both the county and tribal aging unit director and legal-assistance provider have certain responsibilities. Supervision regarding all client-related, substantive legal/advocacy work and case supervision of the individual elder benefit specialists will be the sole responsibility of the legal-assistance provider. County and tribal aging units must do all of the following:

- (A) supervise the daily job performance of the individual elder benefit specialist(s)
 - (B) supervise all issues regarding worker efficiency and task management
 - (C) County or tribal aging unit director and the supervising attorney will jointly supervise issues concerning caseload size and methods of obtaining stated objectives.
 - (D) supervise how the elder benefit specialists are allocating their overall time on cases, other functions, and other issues which can reasonably be assessed using only non-confidential material, such as proficiency in various substantive areas, scope of outreach/education activities and overall productivity
 - (E) supervise the EBS regarding adherence to agency work rules, consistent with these policies
 - (F) supervise and complete regular reviews and complete employee performance appraisals
- (4) County or tribal aging units must ensure that all elder benefit specialists are covered by appropriate and adequate liability and malpractice insurance.
 - (5) County or tribal aging units will, in consultation with their legal-assistance provider and AAA, ensure that a policy and protocol are developed for elder benefit specialists to close case intake, to implement a waiting-list system, and to implement a system for referral of urgent cases to other providers or *pro bono* attorneys if necessary.
 - (6) County or tribal aging units must employ, at minimum, a full-time EBS, or one that is as close to full-time as possible within the limits of their state EBS funding. Elder benefit specialists' funding includes earmarked OAA Title III-B funding of 5 percent. It may also include, at the county's discretion, a county levy. The tribe may also include, at the tribe's discretion, tribal funds. At the state's discretion, EBS funding may include state health insurance assistance program (SHIP) funding. In allowable situations, a state waiver of required OAA funding may be granted to implement 100 percent Medicaid time reporting. In this instance, Title III-B funding and/or county levy supporting the EBS program may be used elsewhere, within the restrictions that apply to these funding sources. If a county or tribe has received a waiver of the state requirement that at least 5 percent of its OAA III-B allocation be used for the EBS, the county or tribe will ensure that the total funding to support the EBS program does not decrease. Full-time means the following:
 - (A) The number of hours is considered full-time by the county, tribe, or contract agency's personnel policies.
 - (B) Clients have access to EBS services five days per week during normal business hours.
 - (C) The person(s) providing these services must be fully trained and supervised as an EBS and cannot be assigned other permanent responsibilities outside the scope of the EBS program, if such duties are supported with these earmarked program funds.
 - (7) County and tribal aging units will ensure that each elder benefit specialist has access to the Internet and has a private e-mail address which is accessible from their desktop.
 - (8) County and tribal aging units may require the elder benefit specialists, when making home visits or otherwise away from the office on business, to leave written information regarding where they can be contacted (name, address, and phone number).

This information is only for contacting the EBS in an emergency and may not be used for any other purpose. Providing this information does not waive a client's right to confidentiality; alternatively, county and tribal aging units are encouraged to provide elder benefit specialists with cellular phones so they can be contacted when out of the office on business.

- (9) The county or tribal aging unit director may decide to serve a limited number of persons under age 60 in its EBS program using non-OAA resources. If resources are adequate and the supervising attorney determines the case has merit, the EBS may serve any of the following:
 - (A) a person aged 58 or older who is requesting assistance with a disability application or appeal, because the appeal process takes so long that the person is likely to be age 60 by the final resolution
 - (B) a person under age 60 who may need assistance with an issue where providing such assistance would also benefit a spouse over age 60 (e.g., making an SSI-E application)
 - (C) a person aged 55 or older whose situation the aging unit director determines presents other compelling circumstances
- (10) If funds are insufficient for an EBS to attend all regional trainings and case discussions organized by the legal-assistance provider, the aging unit director will ask the AAA and legal-assistance provider for technical assistance aimed at adjusting program operations in order to free up sufficient funding.

10.2 Planning and Coordination

- (1) County and tribal aging unit directors will consult with the legal-assistance provider (and may consult the AAA) in the hiring of elder benefit specialists in competitive situations, including having them review the EBS job description, and including them in the applicant screening or interview process when permitted under county or tribal personnel rules. The decision to hire and fire rests with the county or tribe.
- (2) County and tribal aging unit directors will coordinate with legal-assistance providers to provide periodic performance reviews of each EBS.
- (3) County and tribal aging unit directors will receive timely notification from the legal-assistance provider of EBS cases that involve the county or tribe and are likely to be particularly high-impact or controversial cases within the county or tribe; such notice being limited to the fact that such cases have commenced (without disclosing the substance of the case or identifying information), consistent with applicable rules of professional conduct.
- (4) Counties and tribes will ensure that their elder benefit specialists receive required training in office/program procedures within the first month of employment. Counties and tribes will also ensure that new elder benefit specialists attend the introductory training provided by the legal-assistance provider and that all elder benefit specialists attend the regional trainings and case discussion sessions conducted by the legal-assistance provider, unless the EBS is absent from work or has been excused by the supervising attorney.

- (5) Counties and tribes will consult with the AAA's, legal-assistance providers, elder benefit specialists and the legal-services developer on development of plans for targeting EBS services to appropriate groups of elders.
- (6) County and tribal aging unit directors will be given the opportunity to suggest topics for future regional EBS training consistent with the legal-assistance provider's need for determining the training schedule prior to the beginning of the calendar year.

10.3 Monitoring and Quality Assurance

- (1) Counties and tribes will cooperate with the legal-assistance provider and AAA in receiving a periodic program review of their EBS programs. Client confidentiality must be maintained in all program reviews.
- (2) The aging unit director will receive reasonable advance notice from the legal-assistance provider regarding an upcoming on-site review of the EBS. The director will have an opportunity to meet with the supervising attorney to discuss issues and concerns.
- (3) Whenever the EBS program is assessed or the performance of an individual EBS is reviewed, a report will be given to both the county and tribal aging unit director and involved elder benefit specialist(s). The report on the periodic performance review will be in writing.
- (4) Where the aging unit director has concerns about the substantive performance of the EBS or operation of the program, the director will bring such concerns to the attention of the supervising attorney. Together they will attempt to formulate a mutually agreeable resolution. They may consult with the AAA and the state legal-services developer. Issues that cannot be resolved will be brought to the attention of the legal-services developer and the AAA.
- (5) Counties and tribes must comply with federal and state reporting requirements applicable to the EBS program.
- (6) The aging unit director or commission/committee on aging may request non-confidential information from the EBS about program operations. Such requests will be reasonable as to the type and amount of information requested and the time given for response and will take into account the workload of the EBS.
- (7) Prior to development of the county or tribal aging plan, the county or tribal aging unit will survey client satisfaction with EBS services as well as opinions about service needs and program improvements, ensuring client confidentiality in the process.

10.4 Program Integrity

County and tribal aging unit directors will do all of the following:

- (1) ensure that the needs and preferences of the client are the paramount responsibility of the EBS; that is, an EBS is first and foremost an advocate
- (2) ensure that the EBS is neither fired nor removed from his/her position nor penalized in any manner for responsibly carrying out his/her duties as specified in the job description and these policies
- (3) ensure in any case involving the county or tribe as a service provider or party in interest that the county or tribe refrains from attempting to influence the actions of elder benefit specialists in any manner adverse to the interests of the client. (In such cases it is always advisable to contact the legal-assistance provider.)
- (4) avoid conflicts of interest in relation to or involving their EBS programs, paying particular attention to cases in which the county or tribe is a party
- (5) ensure that elder benefit specialists are provided with the following: a private space for interviewing clients; locked filing cabinets; access to their own telephone; and a computer with its own e-mail address and with broadband access to the Internet. Also, if client-confidential information is stored within the agency's computer system, access will be limited through password protection and/or other means.
- (6) adhere to the client-confidentiality requirements of these standards, and may not view client case files containing any client-identifying information, except when requested to consult on a case by an EBS or supervising attorney and after permission has been obtained from the client
- (7) maintain a strict standard of conduct regarding access to client information, including adhering to the following requirements:
 - (A) The EBS may consult with the county or tribal aging unit director or supervisor about an individual's case but may not identify the client unless and until the client voluntarily consents to this.
 - (B) If, after a client has given consent, the EBS contacts or consults the county or tribal aging unit director/supervisor about a client's case, the county or tribal aging unit director will then be bound by the same rules of client confidentiality as the EBS.
 - (C) The county or tribal aging unit may not use a blanket-style, open-ended waiver of confidentiality in its EBS program; nor may it condition receipt of EBS services on the client's willingness to waive confidentiality.
- (8) not require or attempt to influence the EBS to reveal confidential client information to any other county or tribal employee or official
- (9) not use the EBS to perform elder-abuse investigations because of the potential for serious ethical conflicts between the two roles
- (10) not designate or use the EBS as the lead information and assistance worker for the agency

11. Responsibilities of Elder Benefit Specialists

The elder benefit specialists are the community-level, frontline, primary service providers of the EBS program and are responsible for assisting older persons in gaining access to benefits, entitlements and legal rights. Since persons may come into the EBS job with different levels of skills and abilities, they may not be immediately or even quickly proficient at the more challenging aspects of the job, such as the intricacies of disability cases, or hearings before a Social Security Administration administrative law judge. Nevertheless, there is an expectation of steady progress toward mastery of all aspects of the job. The goal is to have elder benefit specialists spend the majority of their time and effort on high-level advocacy for which they are uniquely well-trained and for which other resources do not exist.

Concomitantly, where other resources exist to handle some of the informational, advisory and more routine tasks of the job, the expectation is that those resources should be used first. Examples include AARP tax aides, and volunteers handling medical-bill sorting, while the EBS maintains a backup role somewhat analogous to the role the supervising attorney plays in relation to the EBS. However, if those other resources are unavailable, these tasks may be an important part of the job, depending upon workload and local needs. The goal of the program is that every EBS will become a skilled and effective advocate.

11.1 Elder Benefit Specialist Role Defined

- (1) Undertake outreach, conduct home visits and provide information to alert older persons to their rights, benefits and entitlements.
- (2) Assist older persons in selectively preparing applications for some benefits as set forth in Section 5 of this chapter.
- (3) Assist older persons in identifying benefits, entitlements or reimbursements which involve health insurance or coverage, or involve payment for or access to health care services.
- (4) Handle individual case intakes and, when appropriate, referrals.
- (5) In areas permitted by law for non-attorneys, provide advice to older individuals on issues involving rights, benefits or entitlements.
- (6) Spot issues/problems that older individuals are encountering and make referrals to supervising attorneys or other appropriate resources.
- (7) Provide direct advocacy under the supervision of the supervising attorney on behalf of older persons in cases involving rights, benefits or entitlements.
- (8) Under the supervision of the legal-assistance provider, represent older clients in appeals or disputes including, but not limited to, priority areas as specified in Section 5 of this chapter.
- (9) Provide advocacy on elder rights issues which directly affect older persons in the county, tribe, and the state.

- (10) Provide public education and/or training on issues affecting the rights, benefits or entitlements of older persons.
- (11) Assist in the recruitment, training and development of community volunteers of all ages to serve the legal-advocacy/benefits-assistance needs of older persons.
- (12) Ensure that all volunteers participating in the program are adequately trained to perform their roles and are fully informed about rules regarding confidentiality and conflict of interest.

11.2 Program Operation

- (1) With respect to supervision, elder benefit specialists will receive supervision from both the legal-assistance provider and the county or tribal aging unit director. Benefit specialists will do all of the following:
 - (A) receive supervision on all substantive legal issues and client-related matters from the legal-assistance provider
 - (B) review with the legal-assistance provider and receive supervision on the following: case acceptances, individual case handling, and the closing of cases
 - (C) review with the legal-assistance provider all cases involving the county or tribe which are likely to be high-impact or controversial, to examine any existing or potential conflict of interest and to determine if the legal-assistance provider should assume responsibility for the case. High-impact cases are those which have consequences of broad significance to older persons.
 - (D) review with the legal-assistance provider all client notices of adverse action including denials of program or benefit eligibility or coverage, and terminations
 - (E) receive supervision from both the aging unit director and supervising attorney on issues concerning caseload size and methods of obtaining stated objectives
 - (F) receive supervision from the county or tribal aging unit director on non-casework aspects of daily job performance
 - (G) receive supervision from the county or tribal aging unit director on issues of worker efficiency and task management
 - (H) receive supervision from the county or tribal aging unit director on how the elder benefit specialists allocate their overall time on cases and other functions; and other issues which can reasonably be assessed using only non-confidential material, such as proficiency in various substantive areas, scope of outreach/education activities and overall productivity
 - (I) receive supervision from the county or tribal aging unit regarding adherence to agency work rules consistent with these policies
 - (J) receive regular reviews and performance appraisals from the county or tribal aging unit director. Reviews may include evaluative statements provided by legal-assistance providers or consumers.

- (2) In determining whether to accept a case, the EBS will take into account whether it fits in the priority issue areas in Section 5 of this chapter and the populations in Section 4 of this chapter, as well as the following factors:
 - (A) whether the issue presented affects client's access to food, housing, basic income and/or health care or long-term care or significantly impacts the client's safety or well-being
 - (B) whether the case is meritorious
 - (C) potential benefit to client (as opposed to family members, providers or others)
 - (D) benefit to client versus resources expended
 - (E) potential benefit to larger client population
 - (F) staff (and other) available resources
 - (G) availability of evidence/documentation.
 - (H) availability of other assistance (e.g., Legal Services Corporation agency, other agencies, volunteers, private lawyer)
 - (I) the priorities of the county or tribal aging unit
 - (J) cooperation of the client (Note: There may be evidence from past representation to consider.)
 - (K) ability of the client to participate in case (Note: There may be evidence from past representation to consider.)
 - (L) whether representation will jeopardize safety of the client or staff. (Note: There may be evidence from past representation to consider.)
 - (M) if the issue is outside the priority areas listed in Section 5 of this chapter, and whether the EBS is knowledgeable in the area
 - (N) legal-assistance provider's knowledge of substantive law involved. The EBS must consult with the legal-assistance provider as needed in interpreting these criteria in individual situations and whenever there is doubt about whether a case should be accepted.
- (3) Elder benefit specialists may not condition the provision of services to any person 60 years of age or older based on her or his financial status. They may question a client about financial circumstances as part of the process of advocating on the client's behalf and for the purpose of identifying additional resources to which the client may be entitled.
- (4) Elder benefit specialists will give clients a voluntary opportunity to contribute to the program while ensuring privacy with respect to the contribution. When done through individual client contact, the opportunity to contribute must be indicated only after services have been completed. The method of announcing the opportunity to contribute must make clear that the elder benefit specialist's efforts are in no manner contingent on a contribution. The method of announcing may not discourage future utilization of the service by the client or other potentially eligible individuals.
- (5) Elder benefit specialists must provide clients with a mechanism for filing complaints or grievances about the operation of the program; or about denial of service; utilizing the standard grievance procedure required of county and tribal aging units for this purpose.

- (6) Elder benefit specialists will follow the policies and protocol for closing case intake, if necessary, and if intake is closed will implement the waiting-list system and the system for referral of urgent cases to other providers or *pro bono* attorneys.
- (7) Elder benefit specialists will follow the guidelines of the legal-assistance provider and these policies concerning when the legal supervising attorney should be contacted. They may contact the supervising attorney in other situations as they believe reasonable and necessary.
- (8) Pursuant to OAA regulations, elder benefit specialists may not accept fee-generating cases unless other adequate representation is unavailable. Fee-generating cases are those taken by attorneys on a contingent fee basis rather than the client paying the fee. Social security disability cases are exceptions to this rule. Elder benefit specialists will follow the policy of the legal-assistance provider for determining when other legal representation is unavailable in social security disability cases. In other types of cases (even where other representation is unavailable), before providing representation, benefit specialists must first consider the factors in (2) above and whether the case falls within the issue areas listed in Section 5 of this chapter. They may contact the legal supervising attorney for assistance in making these determinations.
- (9) If an EBS receives a referral from another employee within the same agency (e.g., the ADRC, the county or tribal aging unit, or the human services agency); and this occurs after an individual has interacted with said employee; and said individual has expressed an interest in receiving services provided by the EBS, the EBS should feel comfortable contacting the individual because they have affirmatively demonstrated interest in the EBS services.

If an EBS receives a referral from someone other than an ADRC employee, and if the referrer believes that it would be difficult for the person to initiate contact, the EBS will make reasonable attempts to contact the person, provided that the referring individual has informed the potential client and has received verbal consent from them prior to the EBS making contact. The aging unit may limit the program's responsibility to respond to referrals based on workload considerations.

When it is difficult for an EBS to decide whether or not to initiate contact with a client who was referred by a third party (i.e., not an ADRC employee), the supervising attorney should be consulted for guidance.

- (10) Elder benefit specialists must use formal representation agreements if required by the program in which they are assisting the client (e.g., social security) or if required by a policy or rule of a funding source or by their employing agency. In other situations, they may use representation agreements if they wish. Where they do not, elder benefit specialists will make reasonable efforts to ensure through verbal explanation or written communication or both that the client understands all of the following:
 - (A) that the EBS program is a legal-services program, which means that the EBS represents and advocates for the wishes of the elder client, not the wishes of family members or others having an opinion about the client's best interests; that

- the elder benefit specialist's work for the client is supervised by an attorney; and that the EBS is bound by the same rules of conduct as the attorney
- (B) the scope of services the EBS will provide
 - (C) that there is no charge for services, and though voluntary contributions to the Program are welcome, they do not in any way affect the elder benefit specialist's efforts on behalf of the client

11.3 Staffing and Training

- (1) Any EBS hired after the effective date of this chapter will either:
 - (A) have a Bachelor of Arts or Bachelor of Science degree (preferably in a health or human services-related field); or
 - (B) if the person does not meet the requirements under (A), the hiring or supervising agency may submit a request for a waiver form provided by BADR. Approval is at the discretion of BADR and will be based upon a determination of the comparability of the person's education and experience to that under (A).
- (2) Newly hired elder benefit specialists will participate in initial training on office/program procedures as soon as practicable after being hired, and in introductory training on public benefits as soon as offered by the legal-assistance provider.
- (3) Newly hired elder benefit specialists must participate in the county or tribe's new-hire orientation if they were not already a county or tribal employee.
- (4) Elder benefit specialists will attend all regional training sessions on legal/advocacy skills and on substantive areas of the law, as well as roundtable case discussions that are announced at the start of each year and conducted by the legal-assistance provider, unless they are excused by the supervising attorney, or they are unavailable due to illness or unavoidable scheduling conflicts.
- (5) Since BADR-sponsored training at the aging network conferences has come to replace some of the training provided by legal-assistance providers, each EBS will attend these conferences unless (1) the EBS and supervising attorney agree that the EBS need not attend, or (2) there is an unavoidable schedule conflict, or (3) there is insufficient funding to attend. In the latter circumstance the EBS will consult with the AAA and with BADR about other sources of funding including scholarships.

11.4 Planning and Coordination

- (1) The EBS will work with the legal-assistance provider and AAA in the development and expansion of *pro bono* legal resources for the elder.

- (2) The EBS will work with the legal-assistance provider, the AAA, and their county or tribal aging unit director in consultation with the state legal-services developer to assess and develop local plans for reaching the target populations and for addressing the priority needs set forth in Sections 4 and 5 of this chapter.
- (3) The EBS will coordinate with the Board on Aging and Long-Term Care's ombudsman program in order to reach and provide services to residents of long-term-care institutions and participants in long-term-care programs based on the policy in Section 12 of this chapter.
- (4) The EBS will coordinate with the Board on Aging and Long-Term Care's Medigap Helpline counselors to ensure appropriate referrals between the helpline and the EBS program based on the policy in Section 13 of this chapter.
- (5) When the EBS believes a client may gain from other services offered by the aging unit, the EBS will refer the client to those services if the client consents. The benefit specialist must inform the client that refusing to consent will not affect benefit specialist services. If the person receiving the referral requires additional information, the benefit specialist will release the information only if that person provides a written release signed by the client.

11.5 Monitoring and Reporting

- (1) The EBS must cooperate with the AAA and the legal-assistance provider in their performance/program reviews while maintaining client confidentiality.
- (2) The EBS must comply with state and federal reporting requirements while maintaining client confidentiality.
- (3) When requested, the EBS will provide reasonable, non-identifying summary data regarding operation of the EBS program, either to the aging unit director or to the agency board, if such data are available and can be compiled with reasonable effort considering the elder benefit specialist's workload.
- (4) The EBS will (with necessary assistance from other aging unit staff) survey client satisfaction and will solicit written opinions about service needs and program improvements no less than once every county or tribe OAA planning cycle; and will use the results while writing the county or tribal aging plan.

11.6 Program Integrity: Confidentiality

11.6.1 Basis

The confidentiality standards for Wisconsin's EBS program derive from two primary sources: the Older Americans Act (OAA) and Wisconsin's (Supreme Court) Rules of Professional Conduct for Attorneys. The standards in the OAA are based on the belief that older persons may be hesitant to seek legal assistance if others would have access to their identifying information. This is clearly stated in the legislative history to the OAA:

"..., The Committee understands that some legal assistance providers may be reluctant to contract with area agencies without this assurance. Many older individuals might be hesitant to ask for the legal advice and counsel they need if they thought others would have access to their identifying information. This assurance of confidentiality makes it easier for older persons to seek the assistance they need to resolve their legal problems and makes it easier for legal assistance providers to serve them in good faith."

(REP. No. 97, 100th Cong., 1st Sess. 122 (1987))

The standards set forth in the Wisconsin Supreme Court's rules are based both on the ethical duty to maintain client confidences and on the principle of "attorney-client privilege," which protects attorneys and clients from being compelled to testify about communication between the attorney and client. The underlying premise is that effective assistance and representation require clients to disclose financial, medical and personal information, and that without the guarantee of confidentiality they will be reluctant to fully do so.

11.6.2 General Standard of Confidentiality

An EBS or any person appointed to engage in EBS duties may not reveal to anyone information relating to representation of a client, unless the client consents after consultation. Waivers of confidentiality must be knowing and voluntary and limited in scope as the client prefers.

11.6.3 Exceptions to the Standard of Confidentiality

11.6.3.1 Communication with Supervising Attorney

The principle of attorney-client privilege applies to all communication between supervising attorneys and elder benefit specialists relating to benefit specialist cases. This means that an EBS may share all client information with his or her supervising attorney without violating the confidentiality standards.

11.6.3.2 Disclosure to Persons Necessary to Provide Services to Clients

It is permissible to disclose client information to a person, such as aging unit support staff or volunteers, for the purpose of providing client services. For example, an EBS may have a support person assist with entering data in the reporting system or have a volunteer assist with a screening for benefit eligibility. These individuals should only have access to

client information to the extent it is necessary to perform their employment/volunteer functions. Any aging-unit employee whose services are used to support the EBS's representation of clients is subject to the same confidentiality standard as the EBS.

11.6.3.3 Disclosure Implicit in the Representation

There are situations in which, by the very nature of the services the EBS is providing, it will be implicit that the EBS is authorized to disclose client information. For example, if the client asks the EBS to negotiate the repayment of a past medical debt on his or her behalf, it is implicit that the EBS will be discussing the client's matters with the creditor. As another example, if the client requests the elder benefit specialist's services in a social security disability appeal, it is implicit that the EBS will be disclosing information about the client's personal, educational, work and medical histories with Social Security Administration personnel.

11.6.3.4 Disclosures with Specific Permission from the Client

Whenever a client authorizes the EBS to communicate with someone about his or her case, the EBS may do so without violating confidentiality rules. The best course of action is to obtain a signed release from the client for each person or agency with which the EBS has permission to talk. If time does not permit the EBS to obtain a signed release, the EBS must document in the client's file that the client has given permission to speak to specific persons or agencies.

11.6.3.5 Criminal Activity

It is permissible to disclose a client's intended criminal or fraudulent activity if said activity is likely to result in death, substantial bodily harm, or substantial injury to the financial interest or property of another. This should be discussed immediately with the elder benefit specialist's supervising attorney before disclosure. However, if the EBS witnesses a crime or believes one is imminent, they must contact the police by calling 911.

11.6.4 Standard of Confidentiality as Applied to Aging Units

Aging unit staff, including the director, is not excepted from the confidentiality standard except as one or more of the exceptions in Section 11.6.3 above apply. However, when the EBS makes a home visit they will, if requested by the aging unit director, leave written information regarding where they can be contacted (name, address, and phone number). This information is only for contacting the EBS in an emergency and may not be used for any other purpose. Clients' right to confidentiality is not waived by providing this information.

If questions or conflicts arise regarding the applicability of confidentiality standards to aging unit staff, the EBS will notify the supervising attorney and the situation will be discussed between the attorney and the aging unit director.

11.6.5 Standard of Confidentiality as Applied to Reporting of Elder Abuse

While changes in Wisconsin law have made attorneys and persons working under them direct supervisors or permissive reporters, an EBS may not report suspected elder abuse or neglect of their client if the client is competent and has not consented to the report, unless required by law or after obtaining the permission of the legal-assistance provider. However, the EBS can and should provide information to the client that may encourage the client to accept services or other intervention. If the EBS believes that the client's competence is questionable, the EBS will contact the supervising attorney to discuss the situation.

11.6.6 Standard of Confidentiality as Applied to Clients Who Violate Benefit-Program Rules

Violation of benefit-program rules by a client is not an exception to the confidentiality standard. Elder benefit specialists may not report such violations to the agency administering the benefit program. In such circumstances the EBS will immediately contact the supervisory attorney for direction before doing additional work for the client on the issue. If the violation is intentional, the EBS will follow the policy specified in Section 11.9 (5) of this chapter.

11.7 Program Integrity: Avoiding Conflicts of Interest

11.7.1 Background

Conflicts of interest are competing interests which affect or may affect the ability of an advocate to act appropriately on behalf of their client. Although such conflicts are relatively rare, the ability to spot a conflict of interest and act appropriately is of great importance to ensure effective advocacy. Moreover, it is important to avoid not only actual improprieties, but also the appearance of improprieties.

The duty to avoid conflicts of competing interests derives from another ethical rule applicable to attorneys and to elder benefit specialists providing services under their supervision: the duty to advance the wishes of their clients, even when others disagree, such as adult children or even the EBS. This is referred to as the duty of loyalty. There are limits to this duty which

are specified in other ethical rules, such as not facilitating criminal conduct; but absent such considerations, the rule applies. It is in carrying out this duty of loyalty to clients that certain conflicts of competing interests may arise.

11.7.2 Policy

An EBS may not represent a client if the EBS has a conflict of interest. If the EBS believes there may be a conflict that would prohibit her or him from representing a client, or when a conflict arises in the course of representation, the EBS must immediately contact the supervising attorney to inform them of the conflict and discuss how to proceed. If assisting the legal guardian or a client would create a conflict of interest, it is appropriate to decline or terminate services. In some cases, the situation can be remedied by turning the case over to the legal-assistance provider to handle. In other cases, the legal-assistance provider might also have the same conflict-of-interest concerns. In these situations, the supervising attorney will advise the EBS how to proceed. As soon as the EBS identifies a conflict or the potential for a conflict, it is critical that the EBS contact the legal-assistance provider so appropriate steps may be taken. Elder benefit specialists will be particularly careful to avoid conflicts of interest in cases involving the county or tribe as a party in interest.

11.7.3 Categories of Competing Interests

Conflicts may occur for an EBS within the following categories of competing interest:

- (1) **responsibility to a Current Client:** Representation of the client conflicts with the specialist's ability to represent another of their current clients.
- (2) **responsibility to a former client:** Representation of a new client would create conflict with a former client.
- (3) **responsibility to any third person or party:** Representation of a client is compromised because of a pre-existing duty that the specialist personally made to a third party.
- (4) **specialist's personal interest:** Representation of a client is compromised because of a personal interest in the outcome of the representation.
- (5) **any similar interest of someone with whom a specialist may work:** Representation of a client would be compromised because the specialist is aware of a competing interest between a client and someone with whom they work; thus, potentially causing an adverse impact on the duty of loyalty owed the client.

11.8 Program Integrity: Elder Benefit Specialist Role in Elder-Abuse Situations

- (1) Because of the potential for serious ethical conflicts when a current or former client is involved in an abuse investigation, an EBS may not perform elder-abuse investigations under Wis. Stats. s. 46.90.
- (2) Except as provided in (3) below, an EBS may not report suspected elder abuse or neglect (including self-neglect) of a current or former client when that person is competent and will not consent to the report, unless required by law or after obtaining approval from the legal-assistance provider. However, if the EBS believes the decision is not in the client's best interests, the EBS will provide information that may change the person's mind or attempt to convince the person to accept services to address the situation.
- (3) An exception to the policy in (2) above is when the EBS reasonably believes that reporting is necessary to prevent the client from committing a criminal or fraudulent act that the EBS reasonably believes is likely to result in death or substantial bodily harm or in substantial injury to the financial interest of another. If the EBS witnesses a crime in this situation or believes it is highly likely that a crime is about to be committed, the EBS should call the police (i.e., dial 911). Otherwise, the EBS will expeditiously contact the legal-assistance provider to discuss the situation before disclosing confidential information without consent.
- (4) If the EBS reasonably believes that a client is not consenting to a report of elder abuse because mental disability is preventing the client from adequately acting in the client's own interest, the EBS will contact legal assistance to discuss the situation and determine whether some form of protective action is warranted. This policy also applies generally to such situations regardless of whether an elder-abuse report is contemplated. Because taking protective action is permissive rather than mandatory and requires a careful balancing of different ethical considerations in a case-specific fashion, elder benefit specialists must always contact the legal-assistance provider before initiating or participating in any protective interventions without client consent.
- (5) Where confidential information about an elder benefit specialist's client is requested by a person engaged in an elder-abuse investigation under Wis. Stats. s. 46.90, or by any other party involved in or responding to elder abuse, the person requesting the information will provide a written release from the client before the EBS may share information. In other words, the general rule of confidentiality applies. If such a request comes from the police or from a court, or if the EBS receives a subpoena, the EBS must immediately notify the legal-assistance provider before taking any other action.
- (6) Elder benefit specialists are encouraged to participate and share their knowledge as a member of an elder-abuse interdisciplinary team ("I-team"). While they may bring up or participate in I-team discussions involving an elder benefit specialist's client, they may not disclose information about the client without the client's permission. Instead, they will pose the issues involved in a client's situation in a hypothetical or general fashion that will not identify the client. If this is not

possible, either because someone else has brought up the name or the circumstances are such that discussing the issue would effectively disclose the client's identity, they may not participate in the discussion of the case.

11.9 Program Integrity: Other Issues

- (1) Elder benefit specialists will be provided with the following: a private space in which to interview clients; locked filing cabinets; access to their own telephone and to a fax machine; and access to private e-mail and the Internet at their desk. Electronic records of EBS clients must be password-protected to protect confidentiality.
- (2) Elder benefit specialists must be protected against harassment, firing or removal from their position for responsibly carrying out their duties as specified in their job descriptions and this chapter.
- (3) The EBS must be protected from a county or tribe influencing or attempting to influence the EBS to act in a manner detrimental to the EBS's client in any case involving the county or tribe as a party in interest.
- (4) If the EBS reasonably believes that a client is acting in a manner adverse to the client's own interest because a mental disability is preventing the client from acting in their own interest, the EBS will contact the supervising attorney to discuss the situation and determine whether some form of protective action is warranted. This includes, but is not limited to, a situation where a disabled client who is a victim of abuse refuses to consent to an abuse report.
- (5) If an EBS discovers that a client is committing or thinking of committing some type of fraud regarding public benefit programs or insurance, the EBS will do both of the following:
 - (A) contact the legal-assistance provider immediately to discuss the situation and receive instruction on how to proceed
 - (B) inform the client that the client's conduct likely constitutes fraud; explain the potential consequences; and inform the client that the EBS may not assist in anything related to the matter until fraud is no longer an issue, and that while the EBS will not report the fraud (unless in the attorney's judgment the confidentiality exception under Section **11.6.3.2** of this chapter applies), the EBS recommends that the client do so
- (6) An EBS may not honor a request for confidential client information accompanied by a blanket release-of-information form. The EBS will honor a bona fide request to release information, when signed by a client or former client, which specifies the information to be disclosed. If the EBS questions whether the request is bona fide, the client will be contacted for verification prior to releasing information.
- (7) If the EBS receives a request for confidential client information from the police, or from a court, or from an attorney; or if the EBS receives a subpoena, the EBS will notify the legal-assistance provider immediately before taking any other action.
- (8) Clients without a legal guardian or alternate decision maker (for example, a power of attorney) must provide explicit permission for benefit specialists to work with a representative on their behalf. If a client is not able to provide consent to services and lacks a legal decision maker, benefit specialists are limited to providing information and referral.

When a client has a legal guardian, include the client in conversations and actions to the fullest extent possible, based on the client's capability.

There is situation in which it may be appropriate to decline or terminate services while working with a client who has a legal guardian. Examples include but are not limited to:

- (a) Assisting the legal guardian would create a conflict of interest, it is appropriate to decline or terminate services. The benefit specialist should consult with the program attorney as soon as a conflict of interest is identified.
- (b) The client's objectives conflict with the legal guardians. That is, the client refuses the benefit specialist's help or refuses to cooperate with the case. While the benefit specialist can continue to work with the legal guardian, if the client's non-cooperation hinders the benefit specialist's ability to advocate for the client, it may be appropriate to decline or terminate services. The benefit specialist should consult with the program attorney to determine whether to terminate the case.

12. Coordination between the Elder Benefit Specialist Program and the Board on Aging and Long-Term Care's (BOALTC's) Long-Term Care Ombudsman Program

The Board on Aging and Long Term Care (BOALTC) operates the long-term-care ombudsman program under contract with the Wisconsin Department of Health Services (DHS) to satisfy requirements of the OAA. The goal of the ombudsman program is to resolve complaints filed by or on behalf of the residents of long-term-care facilities or participants of the Community Options Program (COP) and/or home and community-based long-term care Medicaid waiver programs. The ombudsman program also handles complaints about the administration of long-term-care services by government agencies at the state and local level. Complaints are investigated in an impartial and unbiased manner and resolutions are negotiated, as the ombudsman program has no enforcement powers. Where the enforcement of a state or federal law or rule is necessary, the ombudsman will work on behalf of the consumer to involve the proper enforcement authority. Legal counsel, available through BOALTC or through the EBS program, can pursue unresolved cases as outlined below.

12.1 Responsibilities of the Ombudsman Program and the Elder Benefit Specialist Program in Nursing-Home Settings

- (1) The role of the EBS program in a nursing-home setting is to provide residents (age 60 and older) with assistance regarding benefit issues including, but not limited to, SSI, social security, Medicare and Medicaid. This includes disputes/appeals involving whether a resident meets the financial and non-financial eligibility criteria for initial and continuing coverage of

nursing-home care by a particular payment source (e.g., Medicaid). Assistance with Medicare Part D is an exception to this general policy; this is the responsibility of the nursing home.

- (2) Elder benefit specialists may not complete or file initial applications for residents of nursing homes; this is the role of the nursing home. If there is any barrier to the application process, then either the EBS or ombudsman assumes responsibilities, described as follows:
 - (A) If the barrier exists because of problems with outside agencies (e.g., county or tribal economic support), the EBS will assume lead responsibility.
 - (B) If the barrier exists because nursing-home staff (e.g., social worker or business office personnel) fail to perform their function, the ombudsman is to serve as lead in resolving the difficulty.
- (3) The role of BOALTC ombudsmen in a nursing-home setting centers on safeguarding residents' rights, including the quality of residents' care.

12.2 Responsibilities of the Ombudsman Program and the Elder Benefit Specialist Program in the Community Options Program and/or Home and Community-Based Long-Term Care Medicaid Waiver Programs

- (1) The role of the EBS program in COP and/or the home and community-based long-term care Medicaid waiver program is, when requested, to provide assistance to persons 60 and above who have been denied or terminated for alleged failure to meet financial or non-financial eligibility criteria.
- (2) The role of the ombudsmen in COP and/or the home and community-based long-term care Medicaid waiver program is to ensure that the quality of care and services delivered through the program are appropriate. Ombudsmen are available to monitor the care plan, ensure that case-management functions are performed properly and that the types, amounts, and quality of services are appropriate and meet the needs identified in the assessment and care plan.

12.3 Coordination of Referrals

- (1) Referrals between the two programs must be made within five working days after consent for the referral is received from the client.
- (2) The referring agency will, after securing the appropriate release from the client, include in its referral any information and records necessary for the receiving agency to effectively provide services. If the referral is for representation in an administrative hearing, the referral must be made no later than 15 working days prior to the hearing date; if the referring agency learns of the hearing date after this 15-day mark has passed, the referral will be made no later than the next working day.

- (3) The receiving agency will provide appropriate follow-up information to the referring agency upon closure of the case or resolution of the issue.

13. Coordination of the Elder Benefit Specialist Program with BOALTC's Medigap Helpline

The Medigap Helpline is a statewide, toll-free telephone service staffed by trained counselors who primarily provide pre-purchase information to callers on Medicare supplement insurance, long-term care, and other types of health insurance. The Medigap Helpline counselors work closely with the Office of the Commissioner of Insurance, making referrals of inappropriate agent practices and commenting on proposed standards. The Office of the Commissioner of Insurance provides the helpline staff with up-to-date policy-comparison information and develops consumer informational materials which prominently display the helpline's phone number.

13.1 Roles and Responsibilities of the Medigap Helpline

- (1) The Medigap Helpline provides pre-purchase or pre-enrollment information about insurance products; or provides such services when elders contemplate coverage changes. This includes giving advice on the purchase of a Medigap policy or evaluation of a current Medigap policy or similar assistance with respect to other insurance to supplement Medicaid and Medicare Advantage plan choices. Issues to be handled by the helpline include all of the following:
 - (A) Medigap open enrollment (which policy to select)
 - (B) selection of specific Medigap coverage riders
 - (C) benefit and price comparison among Medigap policies
 - (D) supplemental coverage for persons under 65 who are on Medicare by virtue of disability
 - (E) suitability of coverage based on the person's needs, other coverage, and financial circumstances
 - (F) explanation of mandated benefits
 - (G) counseling about guaranteed issue of Medigap insurance
 - (H) counseling about obtaining or maintaining employer-based retiree coverage
 - (I) counseling about Medicare Advantage options
 - (J) counseling about federal and state continuation and conversion coverage
 - (K) counseling about whether currently employed persons over 65 or their spouses should enroll in Part B of Medicare
 - (L) general counseling about Medicare Part D drug benefits
 - (M) providing information and counseling on purchase and retention of long-term-care insurance as well as alternatives to long-term-care insurance
 - (N) researching and responding to questions about third-party liability

- (O) counseling about the health insurance risk sharing plan (HIRSP), either as primary insurance or as a Medicare supplement
- (2) The Helpline will refer substantial complaints (e.g., abusive agent practices, agent conveying false information) to the Office of the Commissioner of Insurance for remedy.
- (3) The Helpline will respond to elder benefit specialists' inquiries as priority calls; these calls are to be responded to within three working days.
- (4) The Helpline will refer cases which involve advocacy (e.g., Medicare appeals, denials of coverage/access or post-claim underwriting) to the appropriate benefit specialist for resolution.
- (5) The Helpline may request elder benefit specialists to conduct home visits on the Helpline's behalf in instances where a counselor determines that a face-to-face contact is needed to ensure understanding of information conveyed (e.g., consumer is deaf, blind, or illiterate). The EBS will comply with the request if resources and time permit; if this is not possible, the EBS will make a good-faith effort to find another person to perform the home visit.
- (6) Whenever a mass change, such as a Medicare Advantage or employer's retiree plan termination, adversely affects the interests of a large group of beneficiaries, the Helpline counselor will work with the EBS in the county or tribe to assist affected persons. This includes providing in-person education and assistance, if time and resources permit.

13.2 Roles and Responsibilities of the Elder Benefit Specialist Program in Relation to the Medigap Hotline

- (1) The EBS may explain a person's options for getting Medicare and supplemental coverage and considerations in making a change in these. In addition, benefit specialists may explain the differences between long-term-care insurance and Medicaid coverage of long-term-care.
- (2) The EBS will follow normal intake and case-handling procedures when handling post-enrollment advocacy matters referred by the Helpline.
- (3) The EBS will refer clients to the Office of the Commissioner of Insurance for any instance of abusive insurance-marketing practices which comes to their attention; the specialist will also notify the Medigap Helpline and the legal-assistance provider.
- (4) The EBS will perform home visits for the Helpline or attempt to find someone else to do so under the circumstances specified in Section **13.1 (5)**.
- (5) The EBS will work with the Helpline to assist persons adversely affected by a mass change as described in Section **13.1 (6)**.

14. Advocacy and Lobbying

The following was, with permission, adapted from material developed by Attorney Betsy Abramson while director of the Elder Law Center of the Coalition of Wisconsin Aging Groups.

The Older Americans Act includes advocacy as part of the core mission of the aging network. [See OAA Secs. 305(a)(1)(D) and 306(a)(6)(B).] The Wisconsin Elders Act does likewise [s. 46.82(3)(a)(18)]. The Department of Health Services endorses this as state policy. Elder benefit specialists and supervising attorneys can provide informed advocacy based upon their detailed knowledge of public benefits and the individual cases situations they see; this makes them perfectly situated to advocate for improved public policies affecting older persons. Such advocacy allows individual problems to be translated into systemic reform. However, the OAA also forbids lobbying. This section describes what benefit specialists and supervising attorneys may and may not do under the OAA; that is, when systems advocacy crosses the line to become prohibited lobbying. With respect to lobbying and advocacy, supervising attorneys at Legal Services Corporation-funded agencies must follow the more restrictive LSC regulations instead of those below.

14.1 Permitted Activities

- (1) The EBS may, with the written consent of the EBS's client, contact a legislator or other elected official, legislative employee, or agency official, to advocate for a change in law, rule or policy which would fix the client's problem.
- (2) The EBS may testify about legislation or rules, or otherwise communicate with an elected official about some topic if representing a client affected by the topic, when the client has provided written consent; or if the official has requested that the EBS testify or respond.
- (3) Even without a client or invitation from a legislator, the EBS may testify at any time for informational (educational) purposes. The EBS may only provide information and will refrain from recommending a position on the matter under consideration.
- (4) The EBS may contact legislators or public agency staff to inform them of and make available the results of non-partisan analysis, study or research.
- (5) At the written request of a legislator, an EBS may provide in person or in writing a factual presentation of information on a topic directly related to the performance of a grant, contract or other agreement, including the OAA grant agreement provisions for EBS services and contracts for legal assistance services.
- (6) The EBS may give talks or use communication media to reach older persons and inform them of actions they could, or even should, take to contact elected officials.
- (7) As part of their job, the EBS may serve on a government-sponsored committee.
- (8) The EBS may contact the state legislators in whose district they reside to advocate on an issue even if the EBS does not have an affected client or a request from the legislator.

- (9) The EBS may furnish information to a state agency official in response to a request for information from that state agency official.
- (10) The EBS may send communications to "members," the board, clients and constituents of her or his organization regarding legislation of interest to the organization and regarding actions these persons may want to take.
- (11) The EBS may appear before or communicate with any legislative body, if related to a possible decision that might affect the existence of her or his organization, its powers and duties, tax-exempt status or the deduction of contributions to the organization. For example, if the federal government proposes a 50 percent reduction in the Older Americans Act to pay for heated toilet seats on the new FU60 attack aircraft, the EBS may contact federal legislators to remonstrate and may testify before a congressional committee on the matter.
- (12) Elder benefits specialists may engage in activities which would otherwise be considered lobbying if undertaken on behalf of an organization to which they belong (e.g., the Wisconsin Association of Benefit Specialists) when the position taken and the activity are both authorized by the organization under its by-laws, and when the actions are undertaken outside of work time.
- (13) Elder benefit specialists may lobby on their own time, speaking for themselves, on an issue of their choosing.
Note: Except when advocating on their own time, the elder benefit specialists should identify themselves by their position and organizational affiliation. If advocating on behalf of an organization, the EBS should make clear that they are speaking on the position of the organization; and that the EBS is not speaking for their employing agency.

14.2 Prohibited Activities

- (1) The EBS may not use agency funds, position, title or organizational affiliation to influence any election or to foster or engage in any partisan or political activity. **Note:** This does not prevent an EBS from inviting all candidates for an office to a forum to discuss relevant issues, provided it is run in an even-handed manner, or from sending out candidate surveys and printing the results in an agency newsletter.
- (2) The EBS may not use OAA funds for dues to any organization which has, as a purpose or function, engaged in activities that are prohibited under the OAA, unless the amount of dues per person per year is less than \$100. This \$100 limit does not apply to bar association dues.
- (3) The EBS may not attempt to influence legislative or administrative action by oral or written communication with any elected official, agency official or legislative employee (i.e., engage in lobbying) unless permitted under Section 14.1 above.

14.3 Other Considerations

- (1) Local governmental policies may place additional restrictions on the activities of elder benefit specialists. Elder benefit specialists must, therefore, check with their director or supervisor for further guidance. As mentioned above, supervising attorneys at Legal Services Corporation-funded agencies will follow LSC regulations with respect to lobbying and advocacy.
- (2) While some amount of systems advocacy should be a part of every elder benefit specialist's job, the amount of work time devoted to such tasks will be determined among the EBS, the aging unit director and the supervising attorney as part of ongoing program planning and review.