

How Can Legal Assistance Providers Better Meet the Needs of Tribal Elders?

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Introduction

Tribal elders¹ are revered in American Indian and Alaska Native (AIAN) communities, but many experience significant systemic barriers to accessing the health and social supports they need to age with dignity.² Legal assistance providers can support tribal elders in addressing these unmet needs by connecting them to benefits and supports, and implementing culturally-responsive outreach strategies.

There are nearly one million AIAN people over the age of 65 belonging to the 574 federally recognized tribes across the United States.³ In addition, there are an estimated 680,000 Native Hawaiians and members of over 200 non-federally recognized tribes.⁴ Some states—such as Alaska, Arizona, California, New Mexico, North Dakota, Montana, Oklahoma, Oregon, South Dakota, Texas, Washington, and Wyoming—have the highest population of AIAN residents.⁵ While many AIAN individuals live on or near tribal lands, a significant portion live in other rural communities or in urban centers. As such, it is critical for legal services everywhere to be aware of the legal challenges AIAN communities face, prepare to represent tribal elders in a culturally responsive manner, and build trusting partnerships with tribal organizations.

The Older Americans Act (OAA) requires OAA-funded legal services organizations to target services to older adult populations with the greatest social need. “Greatest social need” is defined to include isolation or barriers related to Native American identity, rural location, and other conditions pervasive in AIAN communities, such as the presence of chronic conditions, housing instability, or food insecurity.⁶ Relatedly, the updated OAA regulations call for improved coordination between Title VI programs (which fund services for tribes) and Title III programs (which fund services for states).⁷ Additionally, the American Bar Association’s Standards for the Provision of Civil Legal Aid Standard 4.4 encourages legal aid organizations to provide culturally competent services, including a heightened sensitivity to the characteristics, histories, and cultures of indigenous communities.⁸

1 This issue brief primarily uses the term “tribal elders” to describe American Indian and Alaska Native older adults, as informed by our conversations with tribal elders and advocates and to reflect the important role that elders play in Native culture. However, we may use other terms to reflect the language used in the cited source.

2 R. Turner Goins, *Aging in Indigenous Communities: An Overview*, Generations (Sept.-Oct. 2021).

3 International Association for Indigenous Aging, *American Indians and Alaska Natives: Key Demographics and Characteristics*, NCOA (Jan. 10, 2023); *Federally recognized Indian tribes and resources for Native Americans*, USA.Gov (last visited Nov. 2, 2023); *Culturally Competent Health Care*, NICOA (last visited Nov. 2, 2023) (noting that more Tribes are awaiting recognition).

4 Brittney Rico et al., *Chuukese and Papa New Guinean Populations Fastest Growing Pacific Islander Groups in 2020*, Census (Sept. 21, 2023); Elilis O’Neal, *Unrecognized Tribes Struggle Without Federal Aide During Pandemic*, NPR (Apr. 7, 2021).

5 U.S. Census Bureau, Ana I. Sánchez-Rivera et al., *Detailed Data for Hundreds of American Indian and Alaska Native Tribes* (Oct. 3, 2023); U.S. Dept of Health and Human Servs., Office of Minority Health, *American Indian/Alaska Native Health* (Sept. 20, 2024).

6 45 C.F.R. § 1321.3 (2024).

7 45 C.F.R. § 1321.53 (2024).

8 American Bar Association, [Standards for the Provision of Civil Legal Aid Standard 4.4](#).

Inequities, Poverty, and Social Determinants of Health Among AIANs

The cumulative effects of historical and ongoing violence against AIAN populations has led to longstanding health and economic inequities for tribal elders. Native communities also experience significant health disparities, particularly those related to heart disease, mental health and substance use disorders, and chronic illness. Tribal elders in particular face high rates of certain chronic illness, including obesity, diabetes, hypertension, and mortality from Alzheimer’s disease. The average life expectancy among AIANs is 10 years less than the national average. Tribal elders are traditionally the keepers of the tribe’s language and tradition, so their premature deaths can impact the longevity of the tribal communities and their cultures.

The long history of oppression—including mass genocide, forced sterilization, and broken treaty promises—contributes to feelings of mistrust of federal and state governments, underutilization of public programs, and worsened economic and health outcomes among indigenous communities.⁹ Tribal elders today who attended Indian boarding schools as children, for example, may have been violently punished for speaking their Native language and carry feelings of mistrust.¹⁰

AIAN people, both on and off reservations, experience disproportionately high rates of poverty compared other racial groups in the U.S., with 18.9% of tribal elders living in poverty.¹¹ Self-determination policies are an important tool supporting economic development on reservations and improving poverty rates.¹² The existence of “food deserts,” combined with limited public transportation on rural reservations, may leave tribal elders who are unable to drive with a lack of options for nourishment. Poor road conditions on reservations also create barriers for Native elders in accessing health, retail, or other services; participating in family, community, or organizational activities; and receiving public services, such as Meals on Wheels and home- and community-based services in remote areas. Similarly, the digital divide in Indian country limits tribal elders’ ability to connect socially and to access important information regarding public benefits, aging services, and emergency services.

Legal Needs

Eighty percent of tribal elders have an unmet need for legal help.¹³ One area in which tribal elders may require legal support is advance planning, which allows people to plan for medical and financial decisions as they age, including end-of-life care. Advance health care planning—such as appointing healthcare powers of attorney and creating advance directives—are useful tools for tribal elders to ensure they receive culturally appropriate healthcare and are supported by trusted community or family members.¹⁴ Other issues on which legal assistance providers can support tribal elders are accessing income supports, healthcare coverage, and representation in civil cases, such as elder abuse. Some barriers to accessing legal assistance may include a lack of pro bono legal providers in rural areas and limited transportation options; language and cultural differences; and challenges to accessing information about legal issues due, in part, to technology barriers or confusion about jurisdiction.

9 E.g., Bureau of Indian Affairs, [200 Years of Bureau of Indian Affairs History](#) (last visited Nov. 15, 2024).

10 See Peter Baker & Aishvarya Kavi, [Biden Apologizes for U.S. Abuse of Indian Children, Calling It a ‘Sin on Our Soul’](#), NY Times (Oct. 25, 2024) (reporting on President Biden’s apology for history of Indian Boarding Schools).

11 Admin. for Community Living, [2020 Profile of American Indian and Alaska Native Age 65 and Older](#), 4 (2021).

12 First Nations Dev. Inst., [Indian Country Food Price Index: Exploring Variation in Food Pricing Across Native Communities](#), Working Paper, 1, 4 (2016).

13 US Aging, [National Survey of Title VI Programs 2020 Report](#) 12 (2024).

14 Turner Coins et al., [Advance Care Planning Among American Indian, Alaska Native, and Native Hawaiian Peoples](#), Generations (Oct. 19, 2022).

The landscape of legal assistance for tribal elders includes programs funded under Title III of the OAA; legal assistance funded by other entities, such as the Legal Services Corporation or the [Tribal Civil and Criminal Legal Assistance Program](#); stand-alone Indian Legal Services programs; services offered through Native advocacy organizations, such as the [Native American Rights Fund](#); and [law firms specializing in Native American issues](#), which may charge a premium or offer discounted or free representations on certain cases. While some legal services, like [Michigan Indian Legal Services](#)—target representation to Indian Country, it is important for all legal services programs and their staff to be knowledgeable about representing tribal elders.

Social Security

Benefits offered by the Social Security Administration are a vital safety net that can provide economic security for low-income older adults, including tribal elders, who face significant inequities in terms of poverty. Legal services providers can help tribal elders navigate the types of benefits available through the Social Security Administration: Social Security Retirement benefits, Social Security Disability Insurance, and Supplemental Security Income.¹⁵

Retirement benefits—as well as survivors benefits—are available to individuals age 62 and older with eligible work history, and may be available to certain members of their families. Tribal elders also face inequities and disparities in terms of disability and other health conditions. Social Security Disability provides benefits to those with eligible work history who have a qualifying disability and Social Security Income benefits provide financial support to individuals with qualifying disabilities or aged 65 and older with limited income and assets. Legal assistance providers can begin to support tribal elders on accessing income supports by building the knowledge about eligibility requirements for common financial assistance programs¹⁶—such as Social Security, Temporary Assistance to Needy Families (TANF), and burial assistance—to spot which may be beneficial for tribal elders.

Health Services and Coverage

Healthcare coverage options for AIAN communities involves a multitude of federal, state, and local programs, including Indian Health Services (IHS), Medicaid, Medicare, and Urban Indian Health Programs. Navigating the eligibility criteria and enrollment processes for each of these programs can be challenging given the complicated rules, specific caveats for members of tribes, and barriers to accessing accurate and up-to-date information for those in remote locations or with limited digital literacy.

The IHS is a division of the U.S. Department of Health and Human Services that has authority over many hospitals and clinics across the country, serving over two million AIAN people.¹⁷ IHS is a critical source of free healthcare for members of federally recognized tribes, and some patients may be more trusting or comfortable with IHS facilities that are directly managed by tribal governments.

Unfortunately, there are limited number of IHS facilities, meaning some tribal elders may have to travel long distances to access care at an IHS facility. This, combined with the fact that IHS facilities have limited availability of specialist providers and services, means that tribal elders may need to see non-IHS providers to receive proper care. While IHS patients may sometimes be able to access care from outside providers through the Purchased/Referred Care program, it is important to supplement IHS care with health insurance through Medicare and/or Medicaid to ensure robust healthcare coverage.

15 Kate Lang & Sahar Takshi, [Supporting Tribal Elders Through Social Security](#), Justice in Aging (Sept. 24, 2024).

16 For a list of common sources of financial supports, see Bureau of Indian Affairs, [Direct Assistance \(Financial Assistance & Social Services\)](#), (last visited Nov. 15, 2024).

17 Indian Health Services, [IHS Profile](#) (Aug. 2020).

Medicare is a federal health insurance program available to all U.S. citizens age 65 and over, as well as people with disabilities.¹⁸ Medicaid is a state-administered health insurance offered to individuals who meet the financial eligibility requirements in their state.¹⁹ Low-income tribal elders may be considered “triple eligible” for healthcare services through IHS, as well as health insurance through Medicare and Medicaid. Certain advantageous eligibility, cost-sharing, and estate recovery rules may apply to members of federally recognized tribes under the Medicare and Medicaid programs.²⁰ Moreover, Medicaid enrollment can help tribal elders access services not provided by IHS—such as home- and community-based services, which support older adults and people with disabilities who need assistance with activities of daily living—in order to age safely in their communities. Recently, some states’ Medicaid programs may now cover traditional healthcare practices, which are a key aspect of many Native cultures.²¹

Legal assistance providers are critical in supporting tribal elders to navigate the complicated landscape of healthcare coverage and access all of the sources of care for which they are eligible. Additionally, legal providers can help tribal elders ensure their rights are protected, such as representing tribal elders who have faced discrimination in healthcare settings.²²

Elder Abuse Supports

Instances of abuse, neglect, or exploitation often go undetected, unreported, and therefore unresolved, which can lead to dangerous, costly, or fatal outcomes. Tribal elders may experience financial, physical, emotional, or sexual abuse, in addition to spiritual abuse—for example, contaminating or limiting access to ceremonial objects and practices (e.g., removing the elder’s ceremonial items or barring them from attending spiritual ceremonies).²³

Many tribal elders may find sharing information about their abuse to be uncomfortable, taboo, or incongruent with their role as a community leader.²⁴ These feelings may be exacerbated when discussing them with lawyers, law enforcement officials, or Adult Protective Services. Legal services providers can better support tribal elders in elder abuse cases by using respectful and accessible language; building trusting relationships with local tribes; and learning about tribal cultures, history, and value systems. Providers can also familiarize themselves with local Elder Protection Codes—a legal framework in some communities to identify, prevent, and address unwanted behavior.²⁵

18 Medpac, [Medicare 101](#) (last visited Oct. 7, 2024).

19 Medicare.gov, [Medicaid](#) (last visited Oct. 7, 2024).

20 Sahar Takshi, Justice in Aging, [Justice for Tribal Elders: Issues Impacting American Indian and Alaska Native Older Adults](#), 9 (Dec. 2023).

21 Centers for Medicaid & Medicare Services, [Biden-Harris Administration Takes Groundbreaking Action to Expand Healthcare Access by Covering Traditional Health Care Practices](#), Newsroom (Oct. 16, 2024).

22 See, e.g., U.S. Dep’t of Health and Human Services, [Strengthening Nondiscrimination Protections and Advancing Civil Rights in Healthcare through Section 1557 of the Affordable Care Act: Fact Sheet](#) (Oct. 29, 2024).

23 International Association for Indigenous Aging, [Types of Elder Abuse & Warning Signs](#) (last visited Oct. 24, 2024).

24 NICOA, [Elder Abuse](#) (last visited Nov. 24, 2023).

25 For a state-by-state breakdown of Elder Protection Codes, see International Association of Indigenous Aging, [Elder Abuse Codes](#) (last visited Oct. 24, 2024).

Highlighting Restorative Justice Models

Restorative Justice Models are an alternative approach to the traditional and often punitive nature of criminal justice by moving aim toward peacemaking. Restorative Justice practices also reflect many of the values in Native culture and tribal judicial systems, such as strengthening connection to community and harmony between the offender and harmed person.²⁶ Some replicable models for restorative justice in the context of elder abuse in Native communities include talking circles, storytelling, and working with multiple stakeholders to develop preventative approaches, such as with abuse survivors, offenders, families, and whole communities.²⁷

Outreach

In order to best address the unmet needs of tribal elders, legal services programs can tailor their approach to outreach, service delivery, and advocacy to their local tribal communities. In addition to understanding the legal issues that commonly plague tribal elders, advocates can learn about tribal culture and history, build genuine and trusting relationships with local tribes, and actively support tribal elders in overcoming barriers to accessing legal help.

Tribal Sovereignty, Law and Courts

The legal systems and government structures in tribes may vary, but for many it is led by the concept of tribal sovereignty. Tribal sovereignty—and the related term, self-determination—essentially refers to the authority to self-govern. Since the mid-twentieth century, there have been a number of social movements led by indigenous communities and legislation enacted by the federal government that aim to solidify tribal sovereignty as a part of the government-to-government relationship between tribes and the U.S. government. As a result, tribes operate by their own government structures; judicial systems; and constitutions, legislations, and regulations. However, tribes are also subject to federal law, and the U.S. government is charged with the responsibility of protecting tribal lands and providing assistance to tribes.²⁸

By building connections with local tribes, legal assistance providers can better understand the needs of tribal elders, build cultural competency, and reach tribal elders who may not otherwise know about or have mistrust of the legal services available to them. In making these connections, legal services organizations should be cautious not to assume access to tribal leadership and be respectful of which tribal government representatives they approach. Legal services advocates can also be considerate of tribal sovereignty, such as by centering partnerships in the tribe's values, recognizing where legal services can supplement the tribe's capacity, and treating interactions with tribal government as those with legitimate sovereign entities.

Additionally, legal providers may familiarize themselves with the judicial venues of local tribes.²⁹ Tribal courts are under the tribe's control and center the needs of its members and intertribal courts provide services to multiple—often small or rural—tribes, whereas the Code of Federal Regulations (CFR) are those operated by the Bureau of Indian Affairs for tribes that lack the funds to stand up an independent tribal court.³⁰ Typically, tribal courts have jurisdiction over civil cases involving anyone who resides or conducts business on the reservation and criminal cases over violations of tribal law committed by tribal members who reside or conduct business on the reservation.³¹ However, more recent Supreme Court decisions impact tribal sovereignty and tribal jurisdiction by recognizing the state and federal government's concurrent jurisdiction.³²

26 Center for the Study of Social Policy, *Honoring the Global Indigenous Roots of Restorative Justice: [Potential Restorative Justice Approaches for Child Welfare](#)*, (Nov. 1 2019).

27 California Elder Justice Coalition, Elder Justice Viewpoints, [Reflecting on Restorative Approaches to Elder Abuse \(June 14, 2024\)](#).

28 NCAI, [Tribal Governance](#) (last visited Oct. 10, 2024).

29 Robert O. Saunook, [Tribal Courts Council](#), ABA (last visited Oct. 24, 2024).

30 Bureau of Justice Statistics, [Tribal Courts](#) (last visited Oct. 24, 2024).

31 Bureau of Indian Affairs, [What is the jurisdiction of tribal courts](#) (2017).

32 Native American Rights Fund, [Understanding Tribal-State Jurisdiction](#) (last visited Oct. 24, 2024).

Distance and Transportation Barriers

Tribal lands—including American Indian reservations and Alaska Native villages—are largely rural, meaning tribal elders living there must travel long distances to access certain professionals, such as legal assistance providers, healthcare specialists, and even Social Security field offices. Long distances and poor road conditions are a physical barrier for tribal elders, particularly those with functional limitations such as declining eyesight. Alternatives, like public transportation, help from unpaid caregivers, or paid transportation are not an accessible option for most. Similarly, some services (such as Meals on Wheels or mobile legal clinics) may not be able to reliably traverse into tribal lands. Legal services programs can support tribal elders in remote locations access legal help by building a presence in the tribal communities, such as regularly attending meetings on reservations or other locations that are of cultural or social significance to tribal elders.

Digital Divide

Access to information is another barrier that tribal elders may face and an area in which legal services can support. AIAN communities have very low access to broadband internet, and many tribal elders may not have access to or familiarity with electronic devices.³³ Many federal and state agencies and local programs are moving towards housing vital information online—including information about eligibility rules, enrollment forms, notices, and online portals for beneficiaries to upload their own documents—which creates a barrier for tribal elders and others who cannot easily navigate internet websites. Legal services providers can advocate for tribal elder clients to receive information in more easily accessible formats—including by ensuring their own organization’s materials are available in accessible formats—and support them in navigating the information independently.

Cultural Responsiveness

Indigenous communities across the U.S. are very diverse in terms of language, spiritual and cultural practices, local history, geography, and more. However, they experience gaps in healthcare, economic and housing security, nutrition, and legal services.³⁴ In order to best support tribal elders, legal services programs should build connections with local AIAN communities in their services to learn about their unique culture and history, service gaps, and existing community advocacy efforts.

By better understanding indigenous cultures and value systems, legal services providers can provide person-centered and culturally-responsive representation to tribal elders. For example, understanding that spirituality may be an indispensable part of a tribal elder’s life and that barriers to practicing or accessing spiritual resources may not only be detrimental to the tribal elder’s well-being, but may even amount to elder abuse.³⁵ Other examples include recognizing tribal cultures’ potential emphasis on collective values (e.g., communal resources, multi-generational homes) and individual preference for traditional medicine. Relatedly, by learning about the history of indigenous populations in the U.S., as well as the specific history of tribal elders in the legal providers’ service area, advocates can be better equipped to provide trauma-informed representation.

A critical aspect of culturally-responsive legal service delivery and trust is consistency. Building strong and meaningful partnerships with local tribes or tribal organizations requires regularly maintaining connections; accommodating barriers, such as going places where the community already gathers when invited; and centering the partnerships on listening to the direct voices of the tribal elders and their communities.³⁶

Legal services providers can further demonstrate their commitment by creating an inclusive and welcoming atmosphere for AIAN clients. This may include diverse representation on the imagery on their websites and literature; robust language access options; and culturally-responsive trainings for all staff, including outreach and intake staff.

33 U.S. Dep’t of the Interior, Office of Indian Energy & Econ. Dev., *Expanding Broadband in Indian Country* 3 (2020).

34 National Indigenous Council on Aging, *The State of Tribal Elders* (July 29, 2019).

35 Whittney LaCroix, *Understanding and honoring the needs of Native American elders*, American Nurse (May 2, 2023).

36 Just Lead, *Building Community-Legal Partnerships* (2020).

Partnership Models

One method of overcoming barriers caused by transportation, internet access, or cultural responsiveness is using legal navigators—a program that allows non-legal providers to identify individual legal needs and connect prospective clients with legal resources. A navigator program may rely on individuals who already have regular contact with the tribal elder, such as a case manager or congregate meal site staff, to operate a tool (such as an online platform or questionnaire) that will guide one through a legal issue. Navigator programs can be used to support self-represented litigants or to help them connect with a low bono or pro bono attorney. Legal services programs can work to build partnerships with existing tribal organizations to operate a navigator program, such as those intended to reach tribal elders in very remote locations, homebound elders, or elders who may be isolated due to pandemic or natural disaster.

Some other strategies to building trusting relationships with local tribes include prioritizing face-to-face interactions; willingness to attend initial meetings on tribal lands or other areas that are of cultural significance to the tribe; and engaging in non-Western meeting formats or activities, such as Talking Circles or sharing food.³⁷

Conclusion

Tribal elders are often considered to be the knowledge keepers in AIAN communities. However, without appropriate supports and targeted services, they face immense legal and other barriers to aging with dignity as a result of long-standing healthcare, economic, and other inequities. Legal assistance programs are uniquely positioned to help tribal elders navigate public benefits programs and build meaningful partnerships with tribal organizations for improved outreach.

Additional Resources

- [Justice for Tribal Elders: Issues Impacting American Indian and Alaska Native Older Adults](#)
- [Supporting Tribal Elders Through Social Security](#)
- [Building Community Legal Partnerships](#)
- [Tips for Working in Tribal Communities](#)
- [Native American Elder Justice Initiative](#)
- [Strategies for Mitigating Bias in Legal & Aging Services](#)
- [NCLER Spotlighting Equity Series](#)

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.

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³⁷ National Indigenous Elder Justice Initiative, [Recommendations for Developing and Maintaining Tribal Relationships](#) 1 (2023).