



# The State Bar of California

## LAWYER ASSISTANCE PROGRAM

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Date: December 8, 2023

To: Lawyer Assistance Program Oversight Committee

From: Michelle Harmon, Program Supervisor, Lawyer Assistance Program

Subject: Item III.C - Summary and Recommendations of the Financial Assistance Working Group

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At the December 9, 2022 full Oversight Committee meeting, the Committee set goals for 2023. One of those goals was to review the current financial assistance program. Three Committee members initially volunteered for this working group: Justin Delacruz, Tracy LeSage, and James Heiting. After the first group meeting Philip Spiegel replaced Justin Delacruz on the working group. The group met five times during 2023.

Motivating factors for examining the financial assistance program were the outdated criteria used to qualify for the loan and the very low repayment rate. Another motivation for examining the financial assistance program was a concern raised by some stakeholders about the cost of the LAP to participants and the desire to ensure that people are not prevented from obtaining the support they need due to cost. The costs associated with professional monitoring might include paying for biological fluid testing, the LAP support groups, treatment programs, therapy, and/or psychiatric medication management. These costs will differ for each participant based on clinical need.

Two of the most consistent expenses incurred by almost all participants during the evaluation phase of participation are the fees for the LAP support group and the biological testing fees. The group fee is \$250 per month and is paid to the contracted group facilitator who runs the group. The biological fluid testing fees are paid to the third-party testing administrator and the cost will range from \$90 to approximately \$400 per month, based on testing frequency and the type of test indicated.

### Authority for Financial Assistance

Since the LAP's inception in 2002, there has been a recognition that financial need should not be a barrier to participation and Business and Professions Code section 6235 originally

contained the wording, “the State Bar shall establish a financial assistance program to ensure that no member is denied acceptance into the program solely due to the lack of ability to pay.”

The current statute states:

6235. (a) (1) Except as provided in paragraph (2), participants in the Attorney Diversion and Assistance Program shall be responsible for all expenses relating to treatment and recovery.

(2) Consistent with subdivision (b), funds collected pursuant to Section 6140.9 for the Attorney Diversion and Assistance Program may be used for treatment and recovery services for participants who demonstrate an inability to pay. The State Bar shall develop rules or guidelines to implement this paragraph.

(3) In addition, the State Bar may charge a reasonable administrative fee to participants for the purpose of offsetting the costs of maintaining the program.

(b) (1) Notwithstanding paragraph (1) or (3) of subdivision (a), the State Bar shall establish a program to provide financial assistance to licensees and persons eligible for services who otherwise would be denied acceptance into the program solely due to the lack of ability to pay.

(2) The funding for financial assistance shall be drawn exclusively from the ten-dollar (\$10) fee paid by each active licensee under Section 6140.9 to support the Attorney Diversion and Assistance Program.

(3) Notwithstanding the goal of providing financial assistance pursuant to paragraph (1), the amount of funding allocated for the purpose of providing financial assistance shall not be allowed to compromise the financial needs of effectively administering the Attorney Diversion and Assistance Program.<sup>1</sup>

#### Current Financial Assistance Program

The existing financial assistance program is a loan that can cover up to one year of LAP group expenses and one year of laboratory testing expenses. Interest on the loan is set at 7% annually. Applicants must submit an application that includes: copies of federal or state tax returns for the preceding twelve (12) calendar months, or if no tax return has been filed, a reasonable facsimile thereof; a promissory note and; a loan agreement.

Criteria<sup>2</sup> to qualify for the loan are as follows:

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<sup>1</sup> [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=6235.&lawCode=BPC](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=6235.&lawCode=BPC)

<sup>2</sup> These criteria appear to have been unchanged since at least 2007.

(A) A family of two earning up to \$40,000 gross current income would be eligible for 100% assistance with participation expenses; earning \$40,001 up to \$60,000 would be eligible for 50% assistance with participation expenses; and earning \$60,001 up to \$80,000 would be eligible for 25% assistance with participation expenses.

(B) A family of three to five (one to four dependents) earning up to \$55,000 gross current income would be eligible for 100% assistance with participation expenses; earning \$55,001 to \$75,000 would be eligible for 50% assistance with participation expenses; earning \$75,001 to \$90,000 would be eligible for 25% assistance with participation expenses.

(C) A family of six or more (more than four dependents) earning up to \$65,000 gross current income would be eligible for 100% assistance with participation expenses; earning \$65,001 to \$80,000 would be eligible for 50% assistance with participation expenses; earning \$80,001 to \$90,000 would be eligible for 25% assistance with participation expenses.

In 2022, LAP loaned \$23,292 and collected \$5,330 in loan repayments. Historically the rate of repayment has been quite low and LAP currently carries an outstanding debt of about \$2 million from financial assistance loans over the years. Approximately \$288,000 has been repaid since the inception of the program.

### Working Group Considerations

After looking at the history of loans made and repaid and the current criteria for eligibility, the working group brainstormed several ideas that, for a variety of reasons, were eventually seen as either not sustainable in the long term, or an insufficient solution. These ideas included: waiving the interest on the loans, contracting with a collections agency to collect past debt, using LAP funds to pay group facilitators a stipend so the groups would cost less to participants, and asking The Other Bar to provide scholarships.

### New Grant Proposal

Ultimately, the working group determined that the most desirable solution to recommend is to change the loan to a grant that would not have any expectation of repayment, and to update the criteria to qualify. Provisionally titled the "LAP Growth Grant", the new grant would be a need-based grant provided to help participants start down the road to personal growth in the areas of recovery from substance use and mental health problems.

The criteria for the growth grant would be based on household income and is loosely based on State Bar Rule 2.15 regarding scaling of annual licensing fees, which provides for a 25% reduction of annual licensee fees if the gross annual individual income is less than \$60,478.35. This is equivalent to approximately a gross annual individual income of 400% of the Federal Poverty Guidelines (FPG), which is \$58,320 in 2023.

Similarly, the Kaiser Permanente’s Medical Financial Assistance Program which went into effect on June 1, 2023, provides for two levels of assistance (either 100% or 50% of costs) based on household incomes below 200% or up to 400% of the FPG.

A “LAP Growth Grant” that follows this model would pay for 100% of program expenses (LAP group fees and lab testing fees), for one year, for any participant who applies who has a gross annual household income at or below 200% of FPG.

For any participant who applies for the grant with a gross annual household income of between 200% and 400% of FPG, the grant would pay for 50% of program expenses for one year. Therefore, the participant would still be required to pay for half of the program expenses at the time they are incurred.

Annually, this looks like:

If your household or family size is:	100% of Program fees for gross annual household income at or below 200% of FPG	50% of Program fees for gross annual household income up to 400% of FPG
1	Up to \$29,160	\$29,161 to \$58,320
2	Up to \$39,444	\$39,445 to \$78,880
3	Up to \$49,720	\$49,721 to \$99,440
4	Up to \$60,000	\$60,001 to \$120,000
5	Up to \$70,280	\$70,281 to \$140,560
6	Up to \$80,560	\$80,561 to \$161,120

Add \$5,140 for each person in household over 6 persons.

Amounts were calculated using the American Council on Aging’s Medicaid Planning Assistance site: <https://www.medicaidplanningassistance.org/federal-poverty-guidelines/>

As compared to the previous Financial Assistance structure, this “LAP Growth Grant” structure would be an improvement because it is tied to federal poverty guidelines which can be easily updated annually, and it is in line with financial guidelines of other institutions. It allows for more nuance in family structure and income situations since it is broken down by number of people in the household, rather than the three broad categories that were used previously. When compared to the current categories, this proposal would distinguish criteria for singles (family of 1) and the criteria for large families to qualify would be scaled up proportionally. This means that larger families would be eligible for more assistance in the new model.

Additionally, this proposal would eliminate eligibility for 25% assistance. If the Committee believes retaining that is desirable, it can easily be calculated by determining a percentage of the FPG (for example, 500%).

The LAP Growth Grant could also include the possibility of a co-pay for participants who are not eligible for 100% of program fees. This could be a portion of testing fees or group fees depending on the individual. Criteria for eligibility would need to be established.

The working group estimates that the total amount that would be granted to an individual would be a maximum of approximately \$7,500 (this includes a year of the LAP group fees and lab fees at a high testing frequency). In 2022 there were fewer than 10 people who were approved for a full year of financial assistance. Based on that number, grants to eligible participants for one year would cost the program an estimated \$75,000 per year.

### Recommendation

The working group seeks feedback from the full committee regarding the proposed Growth Grant and recommends the following next steps:

1. Adopt the Growth Grant
2. Delegate administration of the Grant to staff
3. If feasible, create an endowment to ensure stable funding year over year