

LEGAL ASSISTANCE

I. Statement of Philosophy and Purpose

Legal Assistance is intended to protect and secure the rights, benefits and dignity of older persons. Legal assistance services place particular emphasis on activities that assist all older individuals in understanding and maintaining their rights, exercising choice, realizing benefits and opportunities authorized by law and solving disputes.

II. Legal Base

Older Americans Act of 1965 as Amended: 42 U.S.C. 3001 *et. seq*; {Public Law 102-375}, In particular: {42 U.S.C. 3026(a)(2)(C); 42 U.S.C. 3027(a)(15); 42 U.S.C. 3030d(a)(6); and 42 U.S.C. 3058j}
45 CFR, Section 1321.71
N.C.G.S. 143B-181.1 (c)

III. Target Population

The target population consists of older adults with greatest economic or social need, who require legal assistance to protect their rights and benefits. Special priority will be given to older individuals with greatest economic and social need, low income minority older individuals, older individuals who reside in rural areas, and older individuals who are Native Americans. Special outreach efforts will focus on these individuals as well as those older individuals with severe disabilities, older individuals who have limited English speaking ability, and older individuals who have Alzheimer's disease or related disorders. Caretakers of these older individuals should also be informed of the availability of assistance.

IV. Definition of Service

Legal assistance is intended to encompass providing older individuals with legal advice and representation, appropriate referrals to human services agencies or pro-bono services and utilizing preventative measures such as community education. Legal assistance primarily consists of legal advice and representation provided by an attorney to older individuals with economic and social needs. Such assistance includes to the extent feasible, counseling or appropriate assistance by a paralegal or law student under the direct supervision of an attorney and counseling or representation by a non-lawyer where permitted by law.

V. Selection of Legal Assistance Provider

Area Agencies on Aging will select legal assistance providers who will give priority to legal assistance related to income, health care, long-term care, nutrition, housing, utilities, protective services, defense of guardianship, abuse, neglect and age

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discrimination. In assessing a provider's priorities, the AAA should take into account the extent to which some of these priority issues are being addressed by other legal assistance sources. The legal assistance provider should not be required to duplicate existing legal services; rather, the legal assistance provider should provide services in the priority areas to the extent that adequate legal assistance is not otherwise available.

Area Agencies on Aging may either grant or contract (procure) legal assistance with Legal Services Corporations, private law firms, or human service organizations that, in turn, subcontract or subgrant with Legal Services Corporations or private law firms. Legal assistance funding shall not be granted to a for-profit entity. Any award to a private law firm or other for-profit entity shall be through a procurement process which meets the requirements of 45 C.F.R., Part 92.36. 45 C.F.R., Part 92 is the U.S. Department of Health and Human Services version of the federal "common rule" which prescribes administrative requirements to state and local governments in the use of federal funds.

A. Direct Contracting/Granting

Services provided by direct contract with an attorney or legal service corporation shall include the following:

1. evaluation of the client's need for legal assistance;
2. referral of clients to a private attorney for services prohibited under contract or to a social services agency as appropriate (Note: "Referral" does not necessarily imply referral through the Legal Services Corporation pro bono network, rather it could involve making the client aware of the North Carolina Lawyer Referral Service, EEOC, DSS or other appropriate agency);
3. assistance for clients by providing advice in such areas as public benefits, tenant, consumer and household matters (list is not exclusive);
4. representation for clients in above matters through telephone calls, letters, meetings, production of appropriate documents and litigation;
5. responsibility of providing information and community education on preventive legal management of personal affairs; and
6. coordination between the private bar and the legal assistance provider to ensure that services to older persons are efficiently delivered and the expansion of legal services to older adults on a pro bono or reduced fee basis is encouraged

B. Subcontracting/Subgranting

Services contracted to a multidisciplinary agency and then subcontracted to an attorney shall include the following:

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1. the selection of a legal assistance provider and execution of the contract requiring the service activities “1” through “6” as described in the direct contracting option above;
2. referral of clients to a subcontractor, to a private attorney for services prohibited under contract or to a social services agency as appropriate;
3. the monitoring of subcontracts; and
4. the facilitation of community action.

VI. Client Eligibility

Clients eligible for services must be 60 years of age or older. Eligibility for services is not based on the type of residence in which a person age 60 or older resides. For example a client could live at home, at a congregate setting or at a residential health or group care facility.

VII. Service Provision

A. Service Delivery

Legal assistance should be provided wherever it is necessary to provide the services. For example, services could be provided at the provider’s office, in the client’s home, at congregate settings based on a comprehensive schedule and at residential health and group care facilities. Individuals may be referred by family, friends, or human service agencies or self referred. The referral source does eliminate any obligation a provider may have to obtain a signed retainer agreement from the individual needing legal assistance. Each provider must have written case priorities and maintain a written case file on each client.

B. Administrative Requirements

Each legal assistance provider that is not a Legal Services Corporation grantee must agree to coordinate its assistance with Legal Services Corporation grantees in order to concentrate legal assistance funded under this part on older adults with the greatest economic or social need who are not eligible for services under the Legal Services Corporation Act. In carrying out this requirement, legal assistance providers may not use a means test or require older adults to apply first for assistance through a Legal Services Corporation grantee (See section VII. C. 6., for clarification.). The legal assistance provider should ensure the coordination of activities under Title III, with services provided by the Legal Services Corporation, and services under Title VII, Chapters 2, 3 and 5, as well as other state or federal programs that address the legal assistance needs of older individuals. [Note: To the extent practicable, legal assistance furnished by a legal assistance provider will be in addition to any legal assistance for older individuals being furnished with funds from sources other than the Older Americans Act.]

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There should be coordination among all providers of legal assistance to older adults.]

All service agreements with legal assistance providers should state that the agreement should in no way be interpreted to conflict with the Older Americans Act of 1965, as amended, its regulations or the North Carolina Code of Professional Ethics.

Providers will work with other advocacy efforts of the aging network, such as the Long Term Care Ombudsman Program, as well as the nursing and adult care home community advisory committees.

C. Standards and Restrictions for Awarding Funds

The provisions and restrictions apply only to legal assistance providers and only if they are providing legal assistance under section 307(a) (15) of the Older Americans Act.

Nothing in this section is intended to prohibit an attorney from providing any form of legal assistance to an eligible client, or to interfere with the fulfillment of any attorney's professional responsibilities to a client.

1. Criteria For Awarding Funds: Funds will be awarded to the agencies (providers) that most fully meet the following criteria:

- a. have the staff with expertise in specific areas of law affecting older persons in economic or social need (e.g. the priority issues set forth in section V above);
- b. demonstrate the capacity to provide effective administrative and judicial representation in the areas of law affecting older persons with economic or social need;
- c. demonstrate the capacity to provide support to other advocacy efforts, for example, the long-term care ombudsman program;
- d. demonstrate the capacity to provide legal assistance to institutionalized, isolated, and homebound older individuals effectively;
- e. demonstrate 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;
- f. if engaging in other legal activities, provide assurance that there is no conflict of interest nor other interference with their professional responsibilities;
- g. provide for the education and training of professionals, volunteers, and older individuals concerning elder rights, the requirements and benefits of specific laws, and methods for enhancing the coordination of services;

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- h. promote and provide, as appropriate, education and training for individuals who are or might become guardians or representative payees of older individuals, including information on:
 - 1) the powers and duties of guardians or representative payees; and
 - 2) alternatives to guardianship.
2. **Restrictions on Awarding Funds:**
It is the responsibility of the provider to ensure that:
- a. while engaged in legal assistance activities supported under the Act, no attorney shall engage in any prohibited political activity as specified in 45 CFR 1321.71(h);
 - b. legal assistance is not provided in fee-generating cases, as defined in 45 CFR 1321.71(g)(1), unless adequate representation is unavailable or there is an emergency requiring immediate legal action. All providers shall establish procedures for the referral of fee generating cases;
 - c. no funds available under the Act shall be used for lobbying activities, including but not limited to any activities intended to influence any decision or activity by any non-judicial federal, state or local individual or body. Nothing in this standard prohibits an employee from:
 - 1. communicating with a governmental agency for the purpose of obtaining information, clarification or interpretation of an agency's rules, regulations, practices or policies;
 - 2. informing a client about a new or proposed statute, executive order, or administrative regulation;
 - 3. responding to an individual client's request for advice only with respect to the client's own communication to officials unless otherwise prohibited by the Older Americans Act, Title III regulations or other applicable law (This provision does not authorize publication of lobbying materials or training of clients on lobbying techniques or the composition of a communication for the clients use);
 - 4. making direct contact with the area agency for any purpose;
 - 5. Providing a client with administrative representation in adjudicatory or rule making proceedings or negotiations, directly affecting that client's legal rights in a particular case, claim or application;
 - 6. communicating with an elected official for the sole purpose of bringing a client's legal problem to the attention of that official; or
 - 7. responding to the request of a public official or body for testimony, legal advice or other statements on legislation or other issues related to aging; provided no such action will be taken without first obtaining the written approval of the responsible area agency.
 - d. while carrying out legal assistance activities and while using resources provided under the Act, no provider or its employees shall: (1) participate in any public demonstration, picketing, boycott, or strike, except as permitted by law in

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connection with the employees own employment situation; (2) encourage, direct, or coerce others to engage in such activities or (a) any illegal activity or (b) any intentional identification of programs funded under the Act or recipient with any political activity.

- e. none of the funds made available under the Act may be used to pay dues exceeding \$100 per recipient per annum to any organization (other than a bar association), a purpose or function of which is to engage in activities prohibited under these regulation unless such dues are not used to engage in activities for which Older Americans Act funds cannot be used directly.
- f. a legal assistance provider may not require an older person to disclose information about income or resources as a condition for providing legal assistance under Title III. A legal assistance provider may, however, ask about the person's financial circumstance as a part of the process of providing legal advice, counseling and representation, or for the purpose of identifying additional resources and benefits for which an older adult may be eligible;

D. Voluntary Contributions

In accordance with the requirements of the Older Americans Act, agencies must provide all individuals receiving legal assistance administered by the Division of Aging with the opportunity to contribute to the cost of service. Agencies must establish written policies and procedures governing the collection of voluntary contributions (program income). The policies and procedures should protect the privacy of each older person with respect to his or her contributions and safeguard and account for all contributions. The voluntary contributions shall be used to expand services as provided in 45 CFR, Part 92.25(f)(2).

A service provider that receives funds under the Older Americans Act may not deny any older person a service because the older person will not or cannot contribute to the cost of the service.

VIII. Staff Qualifications

Legal assistance must be provided by a licensed attorney. Staffing may include, but is not limited to, a component involving advice or representation by:

- a) a paralegal under the direct supervision of an attorney;
- b) a third year law student under the direct supervision of attorney; or
- c) a non-lawyer, under the direct supervision of an attorney in an administrative public benefits problem or otherwise permitted by law.

IX. Reporting and Reimbursement

A. Reporting

Legal Assistance shall be reported in accordance with the number of units of service provided. A unit of service equals (1) case hour. In order to maintain client confidentiality, service providers shall assign each legal assistance client with a case number in lieu of completing a Division of Aging, Client Registration Form. Assigned case numbers will be reported on the Units of Service report form (DOA-ZG903). Specific instructions for completing this form are included in Section 2, page 17.

Prior to reporting any service data, service providers must complete two additional forms for entry on the Aging Resource Management System (ARMS). These forms provide general information necessary for the ARMS to accept service data for the purpose of processing reimbursement information.

1. **DOA-150- Provider Agency Information:** This form is completed annually and provides the information necessary to establish the agency as a service provider on the ARMS.

2. **DOA-MIS 301-Site Route Worker Tables:** This form identifies the particular sites at which the community service provider will provide services. This form is completed prior to the beginning of the fiscal year and may be updated throughout the year as necessary.

B. Reimbursement

Service data reported will be the basis for requesting reimbursement for legal assistance. All legal assistance data will be reported using a three digit service code (130). All service data will be reported in diskette format, on a monthly basis, to the Area Agency on Aging on the Units of Service report form (DOA-ZG903). The Area Agency on Aging will provide information regarding monthly reporting deadlines.

Software containing screens for entry of data will be provided by the Division of Aging. This software requires an IBM compatible personal computer with MS-DOS (version 2.0 or better) and

RAM of 128 Kilobytes, at a minimum. Service providers not possessing this capability may request a waiver from this reporting format from the Area Agency on Aging and submit manual reports for data entry via the Area Agency on Aging.

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Computations for determining reimbursement for Legal services are as follows:

$$[(\text{Units reported} \times \text{Unit rate}) - \text{Program income} \times 90\%]$$

Program Income will be reported on form DOA-543. Specific instructions for completing this form are included in Section 2, page 20 of the 1992 Volume V Service Standards Manual.

Specific procedures for reporting units of service for the purpose of requesting reimbursement are included Section 2 of the 1992 Volume V Service Standards Manual.

C. Interim Payments

The Division of Aging intends to pay providers on an interim basis for services provided to older adults in the month in which services are provided. In accordance with federal reimbursement policy, the grantor agency may not expend federal grant funds to sub-recipients more than three days in advance of a sub-recipients outlay of funds. Financial analysis has revealed that the sub-recipients of aging funds as a whole expend an average of ninety-nine percent of their funds each month.

Therefore, the assumption can be made that on the 22nd calendar day of each month the providers of aging services will have expended 70 percent of a month's allotment of budgeted costs. Upon the request of the Area Agency on Aging, the Division of Aging will forward an interim payment through reimbursement channels to service providers equaling 70 percent of one-twelfth of a provider's annual budget of Division of Aging administered funds for Legal services on the 22nd day of each month. Settlement for actual reported expenditures eligible for reimbursement will occur in the month following the month of services reported for reimbursement. Interim payments are intended to help relieve cash flow problems for service providers.

Legal services providers interested in receiving monthly interim payments should contact their Area Agency on Aging.

D. Quarterly Allotment of Funds

The Division of Aging does not have access to an annual amount of budgeted funds at any given time during the year. Normally, funds from various sources are made available to the Division of Aging on a quarterly basis. With this restriction in mind, the Division of Aging must regulate the disbursement of funds on a quarterly basis in order to ensure that its available flow of funds is not over

*North Carolina Division of Aging
Legal Assistance--Policies and Procedures
Effective Date--March 1997*

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extended. Therefore, the Division of Aging must make funds to the Area Agency on Aging and the service provider available on a quarterly basis. The combination of interim payments and actual expenditures reimbursed from Division of Aging funds must be restricted to one-fourth of the annual budgeted funds each quarter for each service provider and Area Agency on Aging. Eligible expenditures reported for reimbursement exceeding the quarter's allotment of funds will be carried over to the following quarter for reimbursement.

(2-10-97)
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