
45 C.F.R. § 1321.93

Legal assistance.

(a) *General—definition.* (1) The provisions and restrictions in this section apply to legal assistance funded by and provided pursuant to the Act.

(2) Legal assistance means legal advice and/or representation provided by an attorney to older individuals with economic or social needs, per section 102(33) of the Act (42 U.S.C. 3002(33)). Legal assistance may include, to the extent feasible, counseling, or other appropriate assistance by a paralegal or law student under the direct supervision of an attorney, and counseling or representation by a non-lawyer as permitted by law.

(b) *State agency on aging requirements.* (1) Under section 307(a)(11) of the Act (42 U.S.C. 3027(a)(11)), the roles and responsibilities of the State agency shall include assurances for the provision of legal assistance in the State plan as follows:

(i) Legal assistance, to the extent practicable, supplements and does not duplicate or supplant legal services provided with funding from other sources, including grants made by the Legal Services Corporation;

(ii) Legal assistance supplements existing sources of legal services through focusing legal assistance delivery and provider capacity in the specific areas of law affecting older adults with greatest economic need or greatest social need;

(iii) Reasonable efforts will be made to maintain existing levels of legal assistance for older individuals;

(iv) Advice, training, and technical assistance support for the provision of legal assistance for older adults will be made available to legal assistance providers, as provided in § 1324.303 and section 420(a)(1) of the Act (42 U.S.C. 3032i(a)(1));

(v) The State agency in single planning and service area States or area agencies on aging in States with multiple planning and service areas shall award, through contract funds, only to legal assistance providers that meet the standards and requirements as set forth in this section and section (c); and

(vi) Attorneys and personnel under the supervision of attorneys providing legal assistance shall adhere to the applicable Rules of Professional Conduct including the obligation to preserve the attorney-client privilege.

(2) As set forth in section 307(a)(2)(C) of the Act (42 U.S.C. 3027(a)(2)(C)) and § 1321.27(i)(3), the State agency shall designate the minimum proportion of Title III, part B funds and require the expenditure of at least that sum for each planning and service area for the purpose of procuring contract(s) for legal assistance.

(3) The State agency in States with a single planning and service area shall meet the requirements for area agencies on aging as set forth in paragraph (c) of this section.

(c) *Area Agency on Aging requirements—(1) Adequate proportion funding.* The area agency on aging shall award at a minimum the required adequate proportion of Title III, part B funds designated by the State agency to

procure legal assistance for older residents of the planning and service area as set forth in §§ 1321.27 and 1321.65.

(2) *Standards for selection of legal assistance providers.* Area agencies on aging shall adhere to the following standards in selecting legal assistance providers:

(i) The area agency on aging must select and procure through contract the legal assistance provider or providers best able to provide legal assistance as provided in this paragraph (c)(2) and paragraphs (d) through (f) of this section; and

(ii) The area agency on aging must select the legal assistance provider(s) that best demonstrate the capacity to conduct legal assistance, which means having the requisite expertise and staff to fulfill the requirements of the Act and all applicable Federal requirements for provision of legal assistance.

(d) *Standards for legal assistance provider selection.* Selected legal assistance providers shall exhibit the capacity to:

(1) Retain staff with expertise in specific areas of law affecting older individuals with economic or social need, including the priority areas identified in the Act;

(2) Demonstrate expertise in specific areas of law that are given priority in the Act, including income and public entitlement benefits, health care, long-term care, nutrition, consumer law, housing, utilities, protective services, abuse, neglect, age discrimination, and defense of guardianship, prioritizing focus from among the areas of law based on the needs of the community served;

(i) Defense of guardianship means advice to and representation of older individuals at risk of guardianship and older individuals subject to guardianship to divert them from guardianship to less restrictive, more person-directed forms of decisional support whenever possible, to oppose appointment of a guardian in favor of such less restrictive decisional supports, to seek limitation of guardianship and to seek revocation of guardianship;

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