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OVERVIEW OF SOME KEY LEGAL SERVICES PROVISIONS IN THE OLDER AMERICANS ACT AS OF OCTOBER 2004

SEE: 42 USC §3001

TITLE I – DEFINITIONS

§3002(31): Term legal assistance means legal advice and representation by an attorney to older individuals with economic or social needs, and includes counseling or other appropriate assistance by paralegal or law student under direct supervision of an attorney, and counseling or representation by a nonlawyer where permitted by law.

TITLE III – GRANTS FOR STATE & COMMUNITY PROGRAMS

§3026 – AREA PLANS

§3026(a)(2) – Funding for Priority Services. Requires area agencies to expend an “adequate proportion” of IIIB funds for each of 3 priority services: access services, in-home services, and legal services.

§3026(b) – Waiver. Provides for waiver of the funding requirement in (a)(2).

§3026(d) Confidentiality protection. Area agency may not require legal provider to reveal confidential information.

§3027 – STATE PLANS

§3027(a)(2) – Needs Assessment & Funding for Priority Services. Requires state agencies to evaluate the need for supportive services, including legal assistance, and to specify a minimum proportion of IIIB funds that each area agency will – in the absence of a waiver -- expend for each of the 3 priority services: access services, in-home services, and legal services.

3027(a)(11) – General Requirements re Legal Assistance.

- A. Requires state plan to assure that AAAs contract with legal providers who meet certain requirements including being subject to any LSC regulations that have been determined appropriate by the Assistant Secretary on Aging;
- B. Requires state plan to assure that --
 - legal assistance programs are designed to serve older persons with social or economic need,

- legal providers, if they are not also LSC grantees, agree to coordinate with existing LSC projects in the area to concentrate OAA funds on those with greatest need, and
 - the AAA makes a finding after assessment “that any grantee selected is the entity best able to provide” the legal services.
- C. Calls on state agency to provide for coordination of the furnishing of legal assistance and provide advice, technical assistance, and training.
- D. Requires state plan to assure, to the extent practicable, that OAA legal services are in addition to services being furnished with funds from other sources, and
- E. Requires state plan to assure that AAAs 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 discrimination.”

3027(a)(13) – Legal Assistance Developer. Requires states to “assign personnel (one of whom shall be known as a legal assistance developer) to provide State leadership in developing legal assistance programs ... throughout the State.”

§3027(f) Confidentiality protection. State or state agency may not require legal provider to reveal confidential information.

§3030c-2 – CONSUMER CONTRIBUTIONS

§3030c-2(a) – Cost-Sharing. Prohibits State from implementing cost sharing for a number of services including legal assistance.

§3030c-2(b) – Voluntary Contributions. Allows voluntary contributions, but requires that the method be non-coercive. Prohibits means testing or denial of services to anyone who does not contribute. Requires the AAA to ensure that each service provider does a number of things including: protect privacy and confidentiality re contributions, and use all contributions to expand the service for which they were given.

3030D. – GRANTS FOR SUPPORTIVE SERVICES

3030d(a) – IIIB Supportive Services Described, including Role of Legal in Guardianship.

Describes supportive services that may be funded with IIIB funds. Re role of legal services in guardianship, specifies it is for representation of wards or allegedly incapacitated persons, or, “if other adequate representation is unavailable,” for representation of “older individuals who seek to become guardians.”

TITLE IV – TRAINING, RESEARCH & DISCRETIONARY PROJECTS

§3032i – Demonstration and Support Projects for Legal Assistance

§3032i(a) – Funding for National Support and Demonstrations in law & aging. Requires Assistant Secretary to make grants/enter into contracts

1. to provide a national legal assistance support system for state and area agencies, legal providers, etc. and
2. to support demonstration projects to expand or improve delivery of legal assistance to older persons with social or economic need.

TITLE VII – VULNERABLE ELDER RIGHTS PROTECTION ACTIVITIES

§ 3058 -- Establishment

Calls on Assistant Secretary to establish and carry out a program for allotments to States to pay for carrying out vulnerable elder rights protection activities.

§3058a – Authorization of Appropriations

§3058a© -- Appropriation Authorized for State Legal Assistance Development. Authorizes “such sums as may be necessary” to carry out state legal assistance development programs. (No appropriation has been made.)

§3058j – State Legal Assistance Development

¶3058j – State developers required. Requires state agencies to provide services of a legal assistance developer and other personnel sufficient to ensure

1. state leadership in securing and maintaining legal rights,
2. state capacity for coordinating provision of legal assistance,
3. state capacity to provide technical assistance, training, and other supportive functions to area agencies, legal providers, ombudsmen, and others as appropriate;
4. state capacity to promote financial management services to older persons at risk of conservatorship,
5. state capacity to assist older persons in understanding their rights, exercising choices, benefiting from services and opportunities authorized by law, and maintaining the rights of older individuals at risk of guardianship; and
6. state capacity to improve the quality and quantity of legal services provided to older individuals.