

PROPOSED RULES

(3) Achieves a satisfactory grade in a proficiency examination approved by the Secretary.

(Sec. 1102, 1861 (s)(11), 1871 of the Social Security Act; 49 Stat. 647; 79 Stat. 322, 331 (42 U.S.C. 1302, 1395x (s)(11) and 1395hh).)

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare Hospital Insurance.)

Dated: May 26, 1978.

WILLIAM D. FULLERTON,
Acting Administrator, Health
Care Financing Administration.

Approved: July 25, 1978.

HALE CHAMPION,
Acting Secretary.

[FR Doc. 78-21222 Filed 7-31-78; 8:45 am]

[4110-83]

Public Health Service
[42 CFR Part 122]

GOVERNING BODY REQUIREMENTS FOR
HEALTH SYSTEMS AGENCIES

Reopening of Comment Period

AGENCY: Public Health Service, HEW.

ACTION: Notice of reopening of comment period.

SUMMARY: This notice reopens the public comment period for the proposed regulations pertaining to governing body requirements for Health Systems Agencies under section 1512(b)(3)(C) of the Public Health Service Act. The Secretary issued proposed regulations concerning governing body requirements for health systems agencies on May 26, 1978 (43 FR 22858). The public comment period terminated on July 10. The Department has received requests from the public asking for extensions of the comment period for these proposed regulations. Due to the complexity and importance of the subject matter, the Secretary has elected to reopen the comment period for 30 Days.

DATE: Comments must be received by August 31, 1978.

ADDRESS: Written comments and recommendations should be submitted to: Director, Office of Policy Coordination, Bureau of Health Planning and Resources Development, Center Building, Room 6-22, 3700 East-West Highway, Hyattsville, Md. 20782. All materials received in response to the proposed regulations will be available for public inspection and copying at the above location on weekdays (Federal holidays excepted) between the hours of 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION
CONTACT:

Colin C. Rorrie, Jr. Ph.D., Acting Director, Bureau of Health Planning and Resources Development, Center Building, Room 6-22, 3700 East-West Highway, Hyattsville, Md. 20782, 301-436-6850.

Dated: July 24, 1978.

JULIUS B. RICHMOND,
Assistant Secretary for Health.

Approved: July 27, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

[FR Doc. 78-21298 Filed 7-31-78; 8:45 am]

[4110-83]

[42 CFR Parts 122, 123]

HEALTH SYSTEMS AGENCY AND STATE
AGENCY REVIEWS OF THE APPROPRIATE-
NESS OF EXISTING INSTITUTIONAL HEALTH
SERVICES AND OF PROPOSED NEW INSTITU-
TIONAL HEALTH SERVICES

Reopening of Comment Period

AGENCY: Public Health Service, HEW.

ACTION: Notice of reopening of comment period.

SUMMARY: This notice reopens the public comment period for the proposed regulations pertaining to Health Systems Agency and State Agency Reviews of the Appropriateness of Existing Institutional Health Services and of Proposed New Institutional Health Services under sections 1523(g) and 1523(a)(6) of the Public Health Service Act. The Secretary issued proposed regulations for health systems agency and State agency reviews of the appropriateness of existing and new institutional health services on May 16, 1978 (43 FR 21274). The public comment period terminated on June 30. The Department has received requests from the public asking for extensions of the comment period for these proposed regulations. Due to the complexity and importance of the subject matter, the Secretary has elected to reopen the comment period for 30 days.

DATE: Comments must be received on or before August 31, 1978.

ADDRESS: Written comments and recommendations should be submitted to: Director, Office of Policy Coordination, Bureau of Health Planning and Resources Development, Center Building, Room 6-22, 3700 East-West Highway, Hyattsville, Md. 20782. All materials received in response to the proposed regulations will be available for public inspection and copying at the above location on weekdays (Federal

holidays excepted) between the hours of 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION
CONTACT:

Colin C. Rorrie, Jr. Ph.D., Acting Director, Bureau of Health Planning and Resources Development, Center Building, Room 6-22, 3700 East-West Highway, Hyattsville, Md. 20782, 301-436-6850.

Dated: July 24, 1978.

JULIUS B. RICHMOND,
Assistant Secretary for Health.

Approved: July 27, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

[FR Doc. 78-21297 Filed 7-31-78; 8:45 am]

[6820-35]

LEGAL SERVICES CORPORATION

[45 CFR PART 1609]

FEE—GENERATING CASES

Statutory Change Regarding Authorized
Representation

AGENCY: Legal Services Corporation.

ACTION: Proposed amendment.

SUMMARY: The provisions in the Legal Services Corporation Act restricting legal services lawyers from undertaking fee-generating cases were amended in 1977. The proposed revision implements the statutory change. It would eliminate the need for a legal services program to attempt to refer an eligible client to a private attorney if the client is seeking either social security or supplemental security income benefits.

DATES: Comments must be received on or before September 15, 1978.

ADDRESS: Legal Services Corporation, 733 15th Street NW., Suite 700, Washington, D.C. 20005.

FOR FURTHER INFORMATION
CONTACT:

Stephen S. Walters, 202-376-5113.

SUPPLEMENTARY INFORMATION: Part 1609 implements section 1007(b)(1) of the Act. The regulation requires a legal services program to attempt referral of every fee-generating case except when "other adequate representation is deemed to be unavailable" according to criteria established in § 1609.4.

The current regulation treats social security and supplementary security income cases as "fee-generating" because there is statutory authority for the award of attorney's fees in them. Referral of these cases was troubling to legal services programs, however, and to the Congress—because the fee

award is deducted from the retroactively owed subsistence payments to which the client is entitled. This concern was the apparent basis for the 1977 amendment to section 1007(b)(1). As amended, it reads, in pertinent part, as follows:

No funds made available by the Corporation under this title, either by grant or contract, may be used—

(1) To provide legal assistance (except in accordance with guidelines promulgated by the Corporation) with respect to any fee-generating cases (which guidelines shall not preclude the provision of legal assistance in cases in which a client seeks only statutory benefits and appropriate private representation is not available).

The second parenthetical clause was added by the 1977 amendments to the Act. The House bill, which would have codified the Corporation's current regulation without change, was rejected in conference, where the Senate provision, adding the second parenthetical clause, was adopted. Commenting on it the Senate committee report said:

The language added by section 9(a) [section 10 of the amendments] would require the Corporation to exclude from the definition of "fee-generating" social security and supplemental security income cases and such other cases as the Corporation deems appropriate because the only recovery sought by the eligible client is the amount of subsistence benefits to which he or she is statutorily entitled. In such instances legal services lawyers would not be required to attempt referral to a private lawyer before providing representation. Sen. Rep. No. 95-172, 95th, Cong., 1st Sess. (1977) at 15.

The amendment proposed here is designed to implement the statutory change.

At the May board meeting the regulations committee presented a draft amendment that would have eliminated the need for a legal services program to attempt to refer a case if

the case involves only a claim for statutory benefits and any fee that is awarded would be deducted from the retroactive benefits to which the claimant is entitled.

In the course of board discussion the committee became convinced that the formulation was too broad, and withdrew the proposal.

A substitute draft, that the committee believes meets the board's concerns and still fulfills the congressional intent, was approved at the May 18, 1978 meeting of the regulations committee, and is presented with the committee's recommendation that it be published for comment.

The addition proposed here has been drafted narrowly, to cover only SSI and social security cases.¹ The commit-

¹There are a variety of other statutory programs from which eligible clients seek benefits, but we know of no others that authorize deduction of attorneys' fees from an award to a claimant. If the attorneys' fees are added to (rather than deducted from),

tee reached its recommendation after discussion of both policy and legal issues presented by the proposed amendment. The principal policy objection to eliminating the referral requirement is that Corporation resources should never be used in any case in which the private bar is willing to provide representation. The committee was of the view, however, that this concern was outweighed by other factors. First, the committee thought it undesirable to require a person who met the Corporation's financial eligibility requirements to be deprived of a portion of a statutory benefit needed for subsistence. Further, eliminating the referral requirement is consistent with the spirit of current §1609.4(a), that permits a legal services program to provide representation when "free referral is not possible". In the view of the committee, the client is not receiving "free" representation when an attorney's fee is deducted from an award of subsistence benefits.²

The committee could find no policy consideration that outweighed the unmistakable congressional intent to have the Corporation eliminate the referral requirement in these cases. Indeed, the committee recognized that the statute would permit eliminating referral in other cases as well, but it believed that doing so would be inconsistent with the board's concern to avoid an overly broad general formulation. If the board adopts the committee's recommendation that the draft be published for comment, responses from legal services programs should indicate whether it is too narrow, and whether there are other categories of cases to which the rationale for excusing referral in SSI and social security cases should apply.

The proposed addition is as follows:

the award, there is no objection to referral. And in the absence of a provision for attorneys' fees, the private bar generally is not interested in such cases. In that event, referral would be excused if a recipient determined, pursuant to §1609.4(a)(3) of the current regulation, that "the case is of the type that private attorneys in the area ordinarily do not accept, or do not accept without prepayment of a fee." This provision remains unchanged by the proposed addition of §1609.4(d).

²Congress authorized attorneys' fees in these cases to encourage the private bar to aid the unrepresented at a time when free legal assistance supported by Federal funds was generally unavailable. We do not believe the statutory provisions indicate congressional preference for private lawyers instead of legal services lawyers in these cases. Authorization of fees may have been a necessity, but it does not promote the purposes of the programs. The purpose of the SSI program, for example, is "to assure a minimum level of income for people who are age 65 or over, or who are blind or disabled and do not have sufficient income or resources to maintain a standard of living at the established minimum level."

§1609.4 Authorized representation in a fee-generating case.

Other adequate representation is deemed to be unavailable when:

(d) An eligible client is seeking benefits under title II of the Social Security Act, 42 U.S.C. 401, et seq., Federal Old-Age, Survivors, and Disability Insurance Benefits; or title XVI of the Social Security Act, 42 U.S.C. 1381, et seq., Supplemental Security Income for Aged, Blind, and Disabled.

ALICE DANIEL,
General Counsel,

Legal Services Corporation.

[FR Doc. 78-21168 Filed 7-31-78; 8:45 am]

[6712-01]

FEDERAL COMMUNICATIONS
COMMISSION

[47 CFR—PART 73]

[BC Docket No. 78-102; FCC 78-504]

ENFORCING SECTION 312(a)(7) OF THE
COMMUNICATIONS ACT

Report and Order

NOTE: The first document in this proceeding was published in the notices section of the FEDERAL REGISTER (43 FR 12938). That document was submitted without the CFR citation "(47 CFR Part 73)" which would have indicated that the document should have been published in the Proposed Rules section of the FEDERAL REGISTER.

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: The Commission reviews its policy of enforcing section 312(a)(7) of the Communications Act which requires broadcast licensees to provide reasonable access to their facilities to legally qualified candidates for Federal elective office.

EFFECTIVE DATE: Nonapplicable.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Milton O. Gross, Broadcast Bureau, 202-632-7586.

SUPPLEMENTARY INFORMATION:

Adopted: July 12, 1978.

Released: July 31, 1978.

By the Commission: Commissioner White concurring in the result.

In the matter of Commission Policy in enforcing section 312(a)(7) of the Communications Act [43 FR 16809].

1. On March 22, 1978 the Commission issued a notice of inquiry concerning its policy in enforcing section 312(a)(7) of the Communications Act.¹ That section provides that:

¹43 FR 12938. Released March 28, 1978. Comments were due May 1, 1978. An extension was granted to May 15, 1978. Reply comments were due May 15, 1978. An extension was granted to May 30, 1978.