

SUMMARY: This final rule mandates the inclusion of the private bar in the priority-setting process, sets specific periodic time deadlines for completion of the priority setting process, requires that programs plan systematically for equal access to services, and requires that a case acceptance schedule be set up to implement the priorities adopted. These changes and additions are necessary to increase the range of participation in the priority setting process, to make it more effective, and to assure more equal access to services by eligible clients.

EFFECTIVE DATE: June 8, 1984.

FOR FURTHER INFORMATION CONTACT: Richard N. Bagenstos, Assistant General Counsel, (202) 272-4010.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation published a proposed rule revising Part 1620 of its regulations governing the process of setting priorities for the allocation of resources on January 9, 1984 (49 FR 1086). Interested parties were given 30 days, until February 8, 1984, to submit comments on the proposed revisions. Sixty (60) comments were received and thoroughly considered.

Sections 1620.1 Purpose and 1620.3 Access.

A number of comments expressed opposition to the added phrase "substantially equal access." Most noted that program, client and geographic differences made it virtually impossible to attain truly equal access, particularly in light of reduced funding levels. There was also confusion over the newly articulated mandate that eligible clients are entitled to "the same types of services and level of representation." There was a concern that such language would prohibit otherwise legitimate preferences such as for the handicapped, the elderly, etc.

"Equal access" does not mean "identical access". The spirit of the revision is to provide a strong mandate for priority setting. It does not require that clients be ranked on the basis of their financial resources, but it does permit distinct differences in resources to justify differences in access. Each program must do its best to provide the highest level of access possible. Each program is to set its own priorities according to its appraisal of the needs of the eligible client community it serves. Once the priorities are set, however, the proposed rule intends that all eligible clients have a reasonable equal opportunity to avail themselves of the range of services offered by the program.

45 CFR Part 1620

Priorities in Allocation of Resources

AGENCY: Legal Services Corporation.

ACTION: Final rule.

In response to comments, the language of § 1620.3 has been modified in the final rule to make it clear that equal access is not to be considered an absolute standard, but is to be interpreted in light of the Act's requirement of economical and effective delivery of legal services, as well as in light of differing service needs and priorities in different sub-areas of a program's service area.

Section 1620.2 Procedure

This section, which establishes the procedure to be followed in setting priorities, has been modified in response to comments to eliminate the requirement of a needs assessment, and to replace it with the requirement of an appraisal as appeared in the old rule. Comments received indicated that a needs assessment was a complicated and expensive procedure, and that most programs had insufficient resources to carry it out. Therefore, the Corporation decided to remove that requirement, at least until such time as it can provide the necessary assistance to meet it.

The words "the governing body of" have been added to the opening language of § 1620.2(a) to indicate that priority-setting is a policy determination to be carried out by a program's board, and is not a staff function. A number of comments opposed the inclusion of the private bar among those whose opinions concerning priorities should be solicited. The most frequent objections to such input were that the private bar tended to be either hostile to or ignorant of the needs of eligible clients. The Corporation, however, encourages the involvement of the private bar as a policy matter in an attempt to broaden knowledge of and concern for the legal problems of eligible clients and to provide additional resources to meet those needs.

There were comments opposing the language in § 1620.2(c) which stated that each program's report on its priority setting activities "shall be submitted to the Corporation for approval and shall be available to the public. This language was apparently interpreted to mean that the Corporation would have to approve the actual priorities set. The comments were of the opinion that this was an undue and unwarranted centralization of the Corporation's authority.

The intent of this subsection, however, is to ensure that programs actually carry out the mandate of the Act to set priorities based on the needs of eligible clients in the service area. The Corporation's role is limited to assuring itself that programs have complied with that section of the Act. Therefore, to make it clear that the

Corporation's role is procedural rather than substantive, the word "approval" has been changed to "acceptance". It should be further noted that that word "acceptance" relates to the report submitted, and not to the priorities themselves. Note that in the final rule § 1620.2(c) has been renumbered § 1620.4(b).

Some comments were received on the language in § 1620.2(c) concerning a "case acceptance schedule". The thrust of the responses was that the term was not sufficiently defined. Some were concerned that this was to be pre-determined and therefore unrealistic, while others expressed approval if the intention was to make such a schedule a compliance reporting device. This is intended to be a device to a program's compliance with its priorities, as well as an aid to staff in the determination of cases appropriate for acceptance under the priorities set by the program.

A number of comments were critical of the deletion of the phrase "the general effect of the resolution of a particular category of cases or matters on eligible clients in the area served" from old paragraph (b)(7). Most stated that the deleted language provided guidance on the use of scarce resources and that its absence, along with the "equal access" mandate, would impede the effectiveness of the priority-setting process. This modification, however, was proposed to complement the Corporation's policy that priorities should be based on the right of the individual client to legal assistance as opposed to an approach that makes a judgment as to which cases may have the most impact on an eligible class of clients.

Section 1620.4 Implementation

This newly designated section contains § 1620.5 from the proposed rule and § 1620.2(c) from the proposed rule, as discussed above.

Section 1620.5 Annual Review

The word "annual" has been added to highlight the periodic nature of the review. Further, the language has been modified to clarify that the priorities are to be reviewed "by the governing body of the recipient". This is in response to comments which interpreted the language of the proposed rule to mean that the Corporation would conduct the annual review. Such a reading is contrary to the intent of that section, and consequently the language has been modified to clarify it.

In addition, the word "distribution" has been added to the list of changes to be considered, to clarify that it is not merely the size and needs of the eligible

client population in a service area which should be considered, but also their distribution within such area.

List of Subjects in 45 CFR Part 1620

Legal services.

For the reasons set out in the preamble, 45 CFR Part 1620 is revised to read as follows:

PART 1620—PRIORITIES IN ALLOCATION OF RESOURCES

Sec.

- 1620.1 Purpose.
- 1620.2 Procedure.
- 1620.3 Access.
- 1620.4 Implementation.
- 1620.5 Annual review.

Authority: Section 1007(a)(2) Legal Services Corporation Act of 1974, as amended (42 U.S.C. 2996f(a)(2)).

§ 1620.1 Purpose.

This part is designed to ensure that a recipient, through policy and plans adopted by its governing body, takes into account the view of eligible clients, staff, the private bar and other interested persons in establishing priorities for allocating its resources in an economical and effective manner, consistent with the purposes and requirements of the Act and other provisions of Federal Law; it is further designed to ensure that all potential eligible clients are provided substantially equal access to the same types of services and levels of representation, unless differences in level of services are based on differences in *client* financial resources.

§ 1620.2 Procedure.

(a) The governing body of a recipient shall adopt procedures for establishing priorities in the allocation of its resources. The procedures adopted shall:

(1) Include an effective appraisal of the needs of eligible clients in the geographic areas served by the recipient, and their relative importance, based on information received from potential or current eligible clients solicited in a manner reasonably calculated to obtain the attitude of all significant segments of the client population, as well as input from the recipient's employees, governing body members, the private bar, and other interested persons. In addition to substantive legal problems, the appraisal shall address the need for outreach, training of the recipient's employees, and support services;

(2) Insure an opportunity for participation by all significant segments of the client community and the recipient's employees in the setting of

priorities, in the development of the report required by § 1620.4(b), and in the annual review required by § 1620.5, and provide an opportunity for comment by interested members of the public.

(b) The following factors shall be among those considered by the recipient in establishing priorities:

(1) The appraisal described in paragraph (a)(1) of this section;

(2) The population of eligible clients in the geographic areas served by the recipient, including all significant segments of that population with special legal problems or special difficulties of access to legal services;

(3) The resources of the recipient;

(4) The availability of another source of free or low-cost legal assistance in a particular category of cases or matters;

(5) The availability of other sources of training, support, and outreach services;

(6) The relative importance of particular legal problems of the clients of the recipient;

(7) The susceptibility of particular problems to solution through legal processes; and

(8) Whether legal efforts by the recipient will complement other efforts to solve particular problems in the area served.

§ 1620.3 Access.

A recipient shall allocate resources consistent with the purposes and requirements of the Act, regulations, guidelines and instructions, including § 1620.2 of these regulations, so as to substantially provide that all potential eligible clients in the recipient's service and level of representation to the maximum extent economically practical. Type of services may vary as required to meet different priorities in different parts of the recipient's service area, and level of representation may vary based on differences in client financial resource. Availability of services should be reasonably proportional to the distribution of eligible clients by county or parish within the recipient's service area. Where a recipient serves an area that is not easily defined by parish or county jurisdictions, other units of political subdivision should be utilized.

§ 1620.4 Implementation.

(a) The governing body of a recipient shall establish policies and procedures that assure clients and the Corporation that cases which are accepted for representation of eligible clients substantially comply with the priorities adopted by the recipient.

(b) By June 30, 1984, each recipient shall prepare an initial written report describing its priorities, how they were developed, the resultant case

acceptance schedule, and the implications of those priorities for the allocation of its resources and the composition, training, and support of its personnel. This report shall be submitted to the Corporation for acceptance and shall be available to the public.

§ 1620.5 Annual review.

Priorities shall be reviewed by the governing body of the recipient at least annually. After the initial report described in § 1620.4(b) each recipient shall submit to the Corporation an annual report summarizing the review of priorities, the date of the most recent appraisal, the timetable for the future appraisal of needs and evaluation of priorities, and mechanisms which will be utilized to ensure effective client participation in priority-setting, and any changes in priorities. The report shall also include a copy of the case acceptance schedule adopted as a result of the priority review and assessment of the changes made in current operations of the recipient as a result of the priority review. The following factors shall be among those considered in determining whether the recipient's priorities should be changed:

(a) The extent to which the objectives of the recipient's priorities have been accomplished;

(b) Changes in the resources of the recipient;

(c) Changes in the size, distribution, or needs of the eligible client population; and

(d) Implementation of § 1620.3.

Dated: May 4, 1984.

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