

which authorized the development of the service, or expenditures in preparation for such offering or development (or has otherwise made a finding that such development or expenditure is needed), and (ii) when the offering of this new institutional health service will be consistent with the basic objectives, time schedules, and plans of the previously approved application: *Provided*, That the State Agency may impose a limitation on the duration of the certificate of need which shall expire at the end of such time unless the health service is offered prior thereto, or (2) solely because there is a health maintenance organization of the same type, as specified in section 1310(b) of the Act, in the same area, or solely because the services being reviewed are not discussed in the applicable health systems plan, annual implementation plan, State health plan, or State medical facilities plan.

(b) In the case of any new institutional health service proposed to be provided by or through a health maintenance organization for which assistance may be provided under Title XIII of the Act, a State Agency shall not deny a certificate of need with respect to the service.

(1) Unless the State Agency determines that the Service is:

(i) Not needed by the enrolled or reasonably anticipated new members of the health maintenance organization or proposed health maintenance organization, or

(ii) Available from non-HMO providers in a reasonable and cost-effective manner which is consistent with the basic method of operation of the health maintenance organization, in accordance with § 123.409(a)(1)(ii), or

(2) Unless the State Agency determines that the service is not needed under criteria based on factors which the Secretary has approved in accordance with § 123.409(c).

(c) In the case of a new institutional health service which is proposed to be provided by or through a health maintenance organization for which assistance may be provided under Title XIII of the Act and which consists of (or includes) the construction, development or establishment of a new inpatient health care facility, the State Agency shall deny a certificate of need for the service if, in addition to making one of the determinations set forth in paragraph (b) of this section, it determines that utilization of the facility by members of the applicant will not account for at least 75 percent of the projected annual inpatient days of the proposed facility.

[FR Doc. 78-8758 Filed 3-16-78; 8:45 am]

[6820-35]

LEGAL SERVICES CORPORATION

[45 CFR Parts 1608, 1612, 1613, 1614, 1620]

AMENDMENTS TO THE REGULATIONS

AGENCY: Legal Services Corporation.

ACTION: Proposed Regulation.

SUMMARY: The Legal Services Corporation Act Amendments of 1977, Pub. L. 95-222 (December 28, 1977), made necessary several changes to the Corporation's Regulations. The Corporation is publishing for notice and comment proposed changes to Part 1608, concerning political activities of employees; Part 1612, concerning prohibited lobbying activities and enforcement of the prohibitions; Part 1613, concerning criminal representation; Part 1614, concerning juvenile representation; and, Part 1620, concerning program priorities. The specific changes and the reasons for them are set out in the Supplementary Information. Where less than a full Section is to be changed, the affected language has been underlined.

DATES: Comments must be received on or before April 17, 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.

EDITORIAL NOTE:—For the Supplementary Information, see the "comments" at the end of each section.

PART 1608—PROHIBITED POLITICAL ACTIVITIES

§ 1608.5 Prohibitions Applicable to Corporation Employees and to Staff Attorneys. (Existing).

While employed under the Act, no Corporation employee and no staff attorney shall, at any time,

(a) Use official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office, whether partisan or nonpartisan;

(b) directly or indirectly coerce, attempt to coerce, command or advise an employee of the Corporation or of any recipient to pay, lend, or contribute anything of value to a political party, or committee, organization, agency or person for political purposes; and

(c) no staff attorney shall be a candidate for elective public office, whether partisan or nonpartisan; nor shall a Corporation employee be a candidate for partisan elective public office.

Section 1608.5. Subsection (c) of this Section should be amended to read as follows: "(c) be a candidate for partisan elective public office."

§ 1608.6 Prohibitions Applicable to Attorneys and to Staff Attorneys (Existing).

(a) While engaged in legal assistance activities supported under the Act, no attorney shall engage in

(1) Any political activity,

(2) Any activity to provide voters with transportation to the polls, or to provide similar assistance in connection with an election, or

(3) Any voter registration activity.

(b) While employed under the Act, no staff attorney shall engage in the activities prohibited by paragraphs (a)(2) or (a)(3) of this section at any time.

Section 1608.6. Paragraph (b) of this Section should be deleted.

Comment. Section 7(a) of the Amendment makes the present provisions of the Hatch Act relating to the political activities of State and local employees applicable to staff attorneys as well as Corporation employees. Other, more restrictive, provisions of the Act affecting the political activities of staff attorneys on their own time were repealed. The proposed revisions of Section 1608 reflect these changes.

PART 1612—RESTRICTIONS ON CERTAIN ACTIVITIES

§ 1612.4 Legislative and administrative representation. (Existing.)

(a) No funds made available to a recipient by the Corporation shall be used, directly or indirectly, to support activities intended to influence the issuance, amendment, or revocation of any executive or administrative order or regulation of a Federal, State, or local agency, or to influence the passage or defeat of any legislation by the Congress of the United States or by any State or local legislative body, except that

(1) An employee may engage in such activities in response to a request from a governmental agency or a legislative body, committee, or member made to the employee or to a recipient; and

(2) An employee may engage in such activities on behalf of an eligible client of a recipient, if the client may be affected by a particular legislative or administrative measure; but no employee shall

(i) Solicit a client for the purpose of making such representation possible, or

(ii) Solicit a group of clients for the purpose of representing it with respect to matters of general concern to a broad class of persons as distinguished from the interests of a particular client.

Section 1612.4. The semicolon at the end of the first full paragraph in paragraph (a) should be deleted and the following inserted: "or State proposals by initiative petition;"

The semicolon and everything following it should be deleted from § 1612.4(a)(2), and the following added: "but no employee shall solicit a client in violation of professional responsibilities for the purpose of making such representation possible; and,

(3) An employee may engage in such activities if a governmental agency, legislative body, committee, or member thereof is considering a measure directly affecting the activities

under the Act of the recipient or the Corporation."

§1613. Enforcement. [Existing.]

(a) The Corporation shall have authority, in accordance with procedures set forth in Title 45 of the Code of Federal Regulations, at §1007.1-4(b) (relating to suspension), or at §§1007.1-5 through 1007.1-11 (relating to termination).

(1) To suspend or terminate the employment of an employee of the Corporation who violates the provisions of this Part; and

(2) To suspend or terminate financial assistance to a recipient which fails to insure that its employees refrain from activities proscribed by the Act or by this Part; provided that

(i) No suspension of employment or financial assistance shall be continued for longer than 30 days unless the recipient or employee of the Corporation is provided notice and an opportunity for a hearing in accordance with the procedures relating to termination cited above, and

(ii) The term "OEO" in the above-referenced regulations shall mean the Corporation, and the term "responsible OEO official" shall mean the President of the Corporation, or, if no President is in office, the Chairman of the Board or his designee.

Section 1612.5: Subsection (a) of this section should be amended to read as follows:

The Corporation shall have authority in accordance with the procedures set forth in Part 1606 and Part 1623 of this chapter;

(1) To suspend or terminate the employment of an employee of the Corporation who violates the provisions of this Part; and

(2) To suspend or terminate financial assistance to a recipient who fails to insure that its employees refrain from activities proscribed by the Act or by this Part.

Comment. Section 9(c) of the amendments expanded the restriction in section 1007(a)(5) of the Act regarding legislative representation to include activities designed to include the outcome of State proposals by initiative petition, expanded the exceptions to the prohibition to include lobbying regarding measures directly affecting the activities of the recipient or the Corporation, and clarified the restriction on soliciting clients for purposes of legislative representation to include only activities that violate the Code of Professional Responsibility. Section 1612.4(a) of the regulations has been revised to include the new language. In addition, section 1612.5(a) has been revised to reflect the fact that the Corporation has published in proposed form procedures governing suspension and termination proceedings. Thus, it is no longer necessary to rely on OEO regulations for enforcement of Part 1612.

It bears emphasis that the new exception for matters "directly affecting" a recipient does not permit lobbying on poor people's issues generally. To the contrary, an amendment in the

House Bill that would have permitted such lobbying was dropped in conference. The exception extends only to appropriations or other measures directed to the recipient or its employees, as opposed to eligible clients. See Conf. Rep. 95-825, 95th Cong., 1st Sess. (1977), at 13.

PART 1615—RESTRICTIONS ON LEGAL ASSISTANCE WITH RESPECT TO CRIMINAL PROCEEDINGS

§1613.4 Authorized representation. [Existing.]

Legal assistance may be provided with respect to a criminal proceeding:

(a) Pursuant to a court appointment made under a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction, if authorized by the recipient after a determination that it is consistent with the recipient's primary responsibility to provide legal assistance to eligible clients in civil matters; or

(b) When professional responsibility requires continued representation of a juvenile pursuant to §1614.6; or

(c) When professional responsibility requires representation in a criminal proceeding arising out of a transaction with respect to which the client is being, or has been, represented by a recipient.

Section 1613.4. Paragraph (b) of this section should be deleted.

Comment. Section 10 of the amendments repealed the restriction on juvenile representation formerly contained in section 1007(b)(4) of the Act. There is, therefore, no longer a basis for Part 1614 of the regulations, and it should be repealed.

Section 1613.4 refers to juvenile cases as instances when representation may be provided in criminal proceedings. Now that such cases are no longer subject to special treatment, however, the general provisions relating to authorized criminal representation should apply. Section 1613.4 has been modified accordingly.

PART 1614—LEGAL ASSISTANCE TO JUVENILES

§1614.1 Purpose.

This part is designed to prevent improper interference in parent-child relationships, while permitting legal assistance when it is necessary to protect essential rights of a juvenile.

§1614.2 Definitions.

As used in this part:

(a) "Guardian" means a person or institution lawfully appointed to protect the interests of a juvenile.

(b) "Institution" means any facility, public or private, providing a juvenile with shelter, care, education, or other services.

(c) "Juvenile" means any person less than 18 years of age who is not emancipated under applicable law.

§1614.3 Policy.

Corporation funds may be used to provide legal assistance to a juvenile when authorized by this Part.

§1614.4 Request of a parent, guardian, or court.

(a) Legal assistance may be provided to a juvenile:

(1) When the written request of a parent or guardian of the juvenile is received; or

(2) At the request of an official or agent of a court of competent jurisdiction; but

(b) Legal assistance shall not be provided to a juvenile who is tried as an adult in a criminal proceeding, as defined in section 1613.2, unless required as part of an attorney's professional responsibilities, pursuant to section 1613.4, or section 1614.6.

§1614.5 Representation without request of a parent, guardian, or court.

Legal assistance may be provided to a juvenile without a request from a parent, guardian, or court in:

(a) cases, proceedings, or matters:

(1) Involving child abuse or neglect;

(2) To determine legal custody or guardianship of a juvenile;

(3) In which a court has jurisdiction by reason of a juvenile's alleged need for treatment, services, supervision or control, including but not limited to proceedings formally designed for persons in need of supervision (PINS) under State law; or

(4) Involving the initiation, continuation, or conditions of institutionalization of a juvenile; or

(b) When no judicial action is commenced against the parent or noninstitutional guardian of the juvenile, legal assistance may be provided:

(1) To secure or prevent the loss of benefits or services; or

(2) To prevent the imposition of services against the will of the juvenile.

§1614.6 Continuity of representation.

If a criminal proceeding, as defined in §1613.2, arises out of a case, proceeding, or matter with respect to which a juvenile has received assistance authorized by this Part, an attorney should make a good faith effort, consistent with professional responsibility, to obtain approval of the court to withdraw from representation in the criminal proceeding, but may continue to provide representation unless relieved by the court.

§1614.7 Limitation policy.

A recipient shall adopt policies designed to insure that Corporation funds are not used to relieve a governmental entity of its legal responsibility to provide compensated counsel to represent juveniles in particular categories of cases, matters, or proceedings.

(Part 1614—Revision)

Part 1614. This part should be repealed.

PART 1620—PRIORITIES IN ALLOCATION OF RESOURCES

§1620.1 Procedure. [Existing.]

(a) A recipient shall adopt procedures for establishing priorities in the allocation of its resources. The procedures adopted shall insure participation by clients and employees of the recipient, and shall provide opportunity for comment by interested members of the public. Priorities shall be reviewed periodically.

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

(1) The resources of the recipient;

(2) The population of eligible clients in the geographic area served by the recipient;