

From: Catherine McNicoll <CatherineMcNicoll@scstatehouse.gov>

To: 'Dickinson, Gerry' <gdickinson@aging.sc.gov>

Zavoras, Catherine <cZavoras@aging.sc.gov>

Broome, Darryl <dbroome@aging.sc.gov>

Watson, Dale <dwatson@aging.sc.gov>

CC: Danny Varat <DannyVarat@scstatehouse.gov>

Date: 10/25/2017 4:15:52 PM

Subject: RE: Questions on Legal Services Provider Contracts

Attachments: 2017-10-19 Notice of Review to AAA.docx

Attached is an updated memorandum to the AAAs. I have corrected a few typos and I have shifted the date contracts and contract reviews are due since this is going out later than I originally based it on.

-Catherine

From: Dickinson, Gerry [mailto:gdickinson@aging.sc.gov]

Sent: Wednesday, October 25, 2017 3:01 PM

To: Catherine McNicoll; Zavoras, Catherine; Broome, Darryl; Watson, Dale

Subject: RE: Questions on Legal Services Provider Contracts

Catherine:

Danny and Darryl briefed Angie Willis of Senator Alexander's staff this morning regarding the legal contracts. Can we send your memo to the AAAs? Please advise.

Thanks

Gerry

From: Catherine McNicoll [mailto:CatherineMcNicoll@scstatehouse.gov]

Sent: Thursday, October 19, 2017 12:39 PM

To: Zavoras, Catherine <cZavoras@aging.sc.gov>; Broome, Darryl <dbroome@aging.sc.gov>; Watson, Dale <dwatson@aging.sc.gov>; Dickinson, Gerry <gdickinson@aging.sc.gov>

Subject: RE: Questions on Legal Services Provider Contracts

Good Afternoon,

I'm sorry this took a bit longer then I was hoping. I have been putting out a multitude of small fires and sometimes that is extremely time consuming. On the bright side, attached is draft language for a memo or PI to the AAAs.

I would say it is probably more direct then they are used to but I think it lays out a fair process according to the law and policies. The law and policies do not have associated time lines until the agency intends to make a final funding decision (i.e. decision to defund the program entirely). I did change the dates a bit but I think the logic is self-explanatory. I did include a hard deadline for contract submission with noncompliance consequences (this is where we could/ maybe should be less harsh).

Please let me know your thoughts on the language asap, I would like to get it out to the AAAs by Monday, if not I think we should shift the dates a bit.

Best Regards,

Catherine McNicoll

Director of Legal & Legislative Affairs

From: Zavoras, Catherine [<mailto:cZavoras@aging.sc.gov>]
Sent: Tuesday, October 10, 2017 9:26 AM
To: Catherine McNicoll <CatherineMcNicoll@scstatehouse.gov>
Cc: Broome, Darryl <dbroome@aging.sc.gov>; Dickinson, Gerry <gdickinson@aging.sc.gov>; Watson, Dale <dwatson@aging.sc.gov>
Subject: Questions on Legal Services Provider Contracts
Importance: High

Catherine,

I need your assistance and advice on some potential legal issues with the AAA legal service contracts.

Here is the background, just FYI:

The OAA requires the regional offices to have contracts with a provider of legal services that comply with the law (OAA, Legal Service Corporation Act, and with the regulations promulgated under the LSCA). Policy requires compliance with the law before we authorize payment to the regions for services provided.

From 2009 through 2013, we had a Model Approaches to Legal Services (competitive) Grant (it expired and is not currently being offered). Each of the AAAs either participated in the grant or had the opportunity to participate in the grant and declined to do so. The ones that participated received thousands of dollars over the grant's lifetime, and all regions had that option. One of the projects was the development and implementation of Legal Assistance Delivery Standards.

The standards were developed collaboratively with input from the National Association of Legal Service Developers, the SC Bar Public Services Director, and the Director of the Access to Justice Commission to ensure we were compliant and didn't cross any UPL lines. The standards were put in place about 5 years ago.

Each AAA was visited, program reviewed, input received, and directions given as to how to have a compliant program which included requirements for contracts with a legal service provider.

As of today, none of the AAAs appear to be in compliance for a variety of reasons. (Some have not submitted their contracts but have assured me that a new contract is on the way, which will resolve the problem for those regions.) I believe that this issue is now moving into the realm of legal opinion, so I am asking for your input, direction, and advice.

Here are my questions:

Do the following concerns place the AAA contracts out of compliance with the Older Americans Act? If they do, do I require revision/remediation before approving further payment?

- 1) Some of the AAAs don't have contracts; they use MOUs. [307(a)11 (A) (i)].
- 2) One of the AAAs was told a three months ago that they could not use an MOU. They simply retitled their MOU as "Contract for Legal Services" and used it anyway. Although the MOU/Contract says "follow the terms and conditions for Legal Assistance Providers," the document does include or even reference the specified terms and conditions of either the OAA or LGOA Policy or the Legal Assistance Delivery Standards. The document also does not require compliance with the OAA or any other law. It also limits the amount of legal assistance that a client can receive.
- 3) Since some of the AAAs don't want a new contract, do the following concerns put their current contracts in

conflict with the law (and thereby, in need of resolution).

- a. Some of the contracts reference that funding comes to the region under the Older Americans Act but makes no reference to any compliance with the Older Americans Act.
 - b. Some contracts are not designating the correct population for legal services. They are using the OAA designated outreach population under §306(a)(4)(B), which prioritizes populations in conflict to the OAA. Further, one or some of the populations may not be eligible for services due to lack of capacity and the inability to enter a representation agreement. The actual target population for providing legal services is found in §305(a)(2)(E), which states that the SUA must: "provide assurance that preference will be given to providing services to older individuals with greatest economic need or greatest social need (with particular attention to low-income minority older individuals, older individuals with limited English proficiency, and older individuals residing in rural areas).
 - c. Some of the contracts state that cost sharing will "be billed to the AAA and is appropriate for some services;" but cost sharing is specifically illegal for legal services or the Ombudsman program and it should not be included in a way that implies it may be appropriate.
 - d. Some contracts state that "Residency is not a requirement for services." With limited exceptions, this is a violation of the Legal Services Corporation Act, which was amended in 1996 to prohibit representing individuals who are not lawful permanent residents.
 - e. Some contracts state that technical assistance from LGOA is disallowed without first gaining permission from the AAA. The Older Americans Act specifies that the SUA will provide technical assistance in the provision of legal assistance to older individuals [§306(a)(4)(B)]... and it also states that the developer must ensure the State capacity to provide technical assistance...to area agencies on aging, legal assistance providers, ombudsmen, and other persons as appropriate. The contract cannot constrain the provider from asking for such assistance or the Legal Assistance Developer from providing technical assistance (clearly NOT advice/no violation of UPL).
- 4) Some contracts impose specific language specifying how confidential information will be limited and or provided. Those standards may or may not be correct because (I assume that) Attorney-client privilege and Rules of Professional Conduct and legal ethical considerations prevail. Should the AAAs define this or should the contract state that the legal standard for confidentiality is the baseline requirement?
- 5) Since the AAAs are all currently using SC Legal Services, capacity for service is not an issue; however, if the AAAs want to use other, private attorneys, then the provider must have the capacity to provide services to the seniors in that PSA. (FYI: This has been an issue in the last two years, which was resolved when the AAAs contracted with SCLS.) [307(a)11 (A) (i)] However, based on the discussion in the Directors meeting Thursday, I do not know if all of the regions will continue to use SC Legal Services..
- a. Should they choose a different provider that is not a grantee of the Legal Service Corporation, should the contract include the provision that the provider will be subject to the specific restrictions and regulations promulgated under the Legal Service Corporation Act?
 - b. If so, would that include assuring capacity to provide services and the limitations of a non LSC being limited to the practice of law that does not put them into conflict with the LSC-service provided. [307(a)11 (A) (ii)]?

If the contracts are out of compliance, I will ask for correction. If the contracts are acceptable, then I will move forward with your assurance that I can accept them and approve payment to the AAAs. I want to be certain that my actions and my program are compliant, especially as we move toward the restructuring. We have been audited every time we have changed administrations, and I imagine that the restructuring audit will be in even greater depth than the previous audits.

Thank you in advance for your input. If you want to meet to discuss or review any of this, just let me know.

Best regards,
Cat

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