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STATE SUPPORT CENTER

April 19, 2012

Mark Freedman, Senior Assistant General Counsel
Legal Services Corporation
3333 K Street NW
Washington, DC 20007

RE: *Comments on Draft Program Letter 12-1
Financial Eligibility Screening Guidelines*

Dear Mr. Freedman:

We write on behalf of seven regional legal services programs in Minnesota, five of which are LSC grantees, and which collectively make up the Minnesota Legal Services Coalition ("MLSC"). These comments pertain to draft Program Letter 12-1 on Financial Eligibility Screening Guidelines ("the draft Letter") and LSC's invitation for public comment regarding the same.

We applaud LSC's recognition of the changing technological landscape in the legal services field, and the funding challenges that necessitate ongoing exploration of technological efficiencies. We acknowledge that the challenge of keeping regulatory pace with the fast-moving technology changes is a significant one, and we commend LSC's efforts to do so.

While we also appreciate LSC's obligation to ensure statutory and regulatory compliance, we fear that the Letter as drafted will stifle innovation and desired efficiencies. We also contend that less burdensome guidance could be provided that does not run afoul of LSC obligations and, in fact, that the draft Letter may include stringencies not mandated by current regulations.

I. MLSC Programs and Technology

Minnesota's legal services programs have often been at the forefront of technological innovation to deliver more effective and efficient service to clients. For example, Minnesota was among the first adopters of statewide websites and document assembly. Southern Minnesota Regional Legal Services has long operated an innovative legal advice and triage telephone hotline in its rural counties, and late last year added a Metro-area hotline that will eventually be merged with the former. More recently, MLSC programs have undertaken an online intake pilot project, being used by Central Minnesota Legal Services and Mid-Minnesota Legal Assistance,

and an online advice pilot project, discussed further below. MLSC's State Support Center (State Support) recently received state funding to pursue replication of both projects.

II. The Pilot Online Advice Project

The online advice pilot project is operated by Legal Services of Northwest Minnesota ("LSNM"), and is referred to as the Legal Information Online Network ("LION"). The LION system, in particular, is directly implicated by the draft Program Letter in two ways:

- We understand the Letter's reference to "direct inquiry" to *exclude* automated intake systems.¹
- The LION system involves "the provision of advice by Private Attorney Involvement attorneys under 45 C.F.R. Part 1614."²

As such, what follows is written in the context of the LION project. We write as a Coalition, however, because of plans to pursue replication of this project, and because we are all interested in the implications the draft Letter may have for other technological innovations. Such innovation is becoming increasingly imperative due to cuts in many funding sources, including state appropriations and LSC, which have resulted in the loss of numerous legal services positions.

Briefly, the LION system was funded by LSC Technology Innovation Grant #08262, and provides a platform for Judicare attorneys, working through LSNM, to advise eligible applicants on legal issues. Applicants must first proceed through an eligibility screening process built into the tool and specific to LSC mandates and LSNM policies. Only those clearly eligible are able to proceed³; others are asked to call the program. Attorneys signed up to provide advice must first follow a three step conflicts check process before accepting the case into their list, and before seeing details of the legal issue.

Although the project is in a pilot stage, many of its goals have begun to be realized. Those goals, many of which are shared by the online intake pilot project, include:

- earlier intervention into legal issues,
- increased access to rural applicants,
- increased access to persons with disabilities,⁴
- broadening pro bono involvement,⁵
- the ability to share more abundant metro area pro bono resources to remote areas of the state,
- increased legal services resources for extended representation through triage, and
- client access any time of day, and without the expensive use of daytime prepaid cellular phone minutes.

¹ See #2 on page 2 of the draft Letter.

² Footnote 5 of the draft Letter.

³ More details on eligibility safeguards are provided below.

⁴ The program provides an important access avenue for deaf and hard-of-hearing applicants, those with speaking impairments, and those with high levels of anxiety that are a barrier to communicating through the telephone. As LSNM is a legal aid program with more than 15 employees, it is duty-bound to provide "appropriate auxiliary aids and/or other assistive technologies to persons with impaired sensory, manual, or speaking skills, in order to afford such persons an equal opportunity to benefit from the legal services program's services." 45 C.F.R. § 1624.4(d)(1). While the tool is not, of course, the only means employed to provide auxiliary assistance, it is an important component of LSNM's efforts to equally serve persons with disabilities.

⁵ Although LSNM's iteration of the system uses a Judicare model, it may be extended to use pro bono attorneys, and Minnesota replications of the tool will certainly include pro bono models.

III. Concerns With the Draft Program Letter

a. The Enhanced Procedures Could Undermine PAI Goals of Economy and Efficiency and Deter Attorney Involvement

The universal 12.5% PAI requirement is uniquely challenging to rural programs with more limited access to private attorney resources, especially those without a Judicare system. Other programs in Minnesota that are candidates for replicating this tool have substantial rural regions. In recognition of limited PAI resources, LSC regulations require an “attempt to assure that the market value of PAI activities substantially exceeds the direct and indirect costs being allocated to meet the requirements of this Part.”⁶ In addition, the regulations require that PAI funds are “expended in an economic and efficient manner.”⁷ In fact, the PAI regulations include eleven references to economy⁸, and provide for the waiver of PAI requirements if delivery cannot occur in an economic and efficient manner.⁹

The concern with the draft Letter is that the new “reasonable inquiry” requirements will decrease economy, especially considering that the system at issue provides only for the least involved form of assistance (advice and counsel). The LION tool is not a “real time” system. The provision and access of advice happen through separate operations, with varying amounts of time in between. This is advantageous in that attorneys are afforded time to research legal issues. However, it does mean that a certain percentage of users never review their answers. In many cases, this may be because the urgency of the legal situation has passed or has grown beyond the usefulness of the advice.

As a practical matter, under the proposal, advice will not be provided until all of these have happened:

1. Client is screened and asks a question.
2. Attorney checks for conflicts and accepts the advice case.
3. Attorney makes reasonable inquiry.
4. Client comes back to the system to find the reasonable inquiry question.
5. Client responds to the reasonable inquiry.
6. Attorney researches and answers the question (or requests more information).
7. Client returns to review the answer (and may send additional clarifying information).

A major goal of the advice project is to prevent legal crises through earlier intervention. Legal questions often come up before legal problems arise, and we know that any delay diminishes the preventative impact of legal advice. The Letter would require direct follow-up and a response to the direct follow-up in all situations, no matter what intake information was provided, and before advice is given. The added steps can be expected to result in significant delay for the client, and more clients may become disillusioned and not come back to the system.

In addition, we are concerned about the requirement’s impact on attorney recruitment and retention. We hope to replicate this system in other parts of the state, almost all of which would rely on traditional pro bono volunteerism, rather than a Judicare model. Retention of pro bono support can be very challenging, and we fear that adding inefficiencies to the system (which may be perceived as redundancies to volunteers) will only escalate this challenge.

⁶ 45 C.F.R. § 1614.1(c).

⁷ 45 C.F.R. § 1614.2(a).

⁸ 45 C.F.R. Part 1614.

⁹ 45 C.F.R. § 1614.6.

b. The Proposed “Reasonable Inquiry” Requirements Would Exceed Those of the Regulations

As the draft Letter points out, recipients “may provide legal assistance supported with LSC funds only to individuals whom the recipient has determined to be financially eligible for such assistance.”¹⁰ The determination entails making “reasonable inquiry” regarding income, income prospects, and assets, and recording the same.¹¹

It is our view that the LION system meets this regulatory standard and was, in fact, developed with this standard in mind. In particular, the system goes through the screening questions screen-by-screen with more detail than would typically be seen on, for instance, a paper application. Difficult terms, such as “equity value”, are clearly defined along the way. Others like “household asset exemptions” are explained in detail, including examples of both exempt and non-exempt assets. Users must select among 15 sources of income and provide details for each, in order to ensure they understand the breadth of the term “income” in the intake context. All of these efforts, among others, are intended to ensure compliance with the reasonable inquiry standard, all are recorded, and all financial information is shown to the attorney on the answer page. In this sense, the LION system goes even further than a very commonly used intake tool – the paper form.

The regulations go on to provide that a verification inquiry is required when “there is substantial reason to doubt the accuracy of the financial eligibility information provided by an applicant....”¹² The draft Letter, however, goes significantly beyond this requirement by requiring such inquiry in all non-direct intakes.¹³ In doing so, we think it exceeds the regulation. In fact, the Letter appears to presume that in all non-direct intakes, there is “substantial reason to doubt the accuracy” of the information provided. We do not see how that could be the case in all non-direct applications, whether submitted on paper or through an online system, given that the attorney has detailed information about the client and adverse party.

c. More Tailored “Reasonable Inquiry” Requirements Could Be Created That Would Minimize Inefficiencies

We concede that there will be cases that do, in fact, suggest the need for further verification. The system itself addresses many of these, as detailed in the next section. To the extent that personal verification is required, however, we believe the circumstances should be tailored to those in which there truly is “substantial reason to doubt the accuracy” of the information provided. We believe the Letter, in its final form, should specifically detail which characteristics of an application suggest there is “substantial reason to doubt” its accuracy, and to only require direct follow-up in those circumstances, as contemplated by 45 C.F.R. § 1611.7(c).

For instance, we would propose that direct reasonable inquiry be required when the applicant indicates s/he has no income. There may be other examples, but we find the assumption that all of these applications cast doubt on the accuracy of the content therein to be excessive.

d. The LION System Includes Several Safeguards against Abuse

The LION system was developed with LSC mandates in mind, as would future systems that could be implicated by this rule. Some of the safeguards against abuse built into the system include the following:

¹⁰ 45 C.F.R. § 1611.4(a).

¹¹ 45 C.F.R. § 1611.7(a)(1).

¹² 45 C.F.R. § 1611.7(c).

¹³ See #2 on page 2 of the draft Letter.

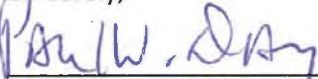
1. The LION system is inherently more exacting and limiting than other forms of intake when it comes to financial and other eligibility screening. In order to not overcomplicate the system and to ensure regulatory compliance, only the most clear-cut cases allow the user to proceed through the system. For example, income entered (taking into account household size) must not exceed 125% of FPG in order for the applicant to proceed. Those above 125%, regardless of expenses, are instructed to call the program for intake. We believe that expenses that could allow service up to 200% are best determined through direct contact. The same is true for complex assets categories.
2. In addition, users are not able to use the back button to return to previous screens, a decision that was based on a desire to prevent abuse.
3. The Judicare attorneys are shown the financial eligibility results on the answer screen.
4. The Judicare attorneys were selected because of their track record working on LSNM cases. They are thoroughly trained on use of the system, as well as eligibility requirements. They are provided online access to a detailed LION attorney user manual.

It is also worth noting that the project partners (LSNM and State Support) worked closely with OCE program counsel to review and make requested changes to the system in the summer of 2010, prior to launch, and that the current system reflects substantial OCE input.

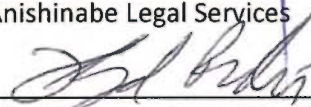
IV. Conclusion

We are grateful that LSC has undertaken the challenge of applying regulations to changing needs and processes within legal aid programs. Clarity of expectations is an important goal in itself. That said, we trust that our concerns will be given thoughtful consideration, and we appreciate your time in reviewing them.

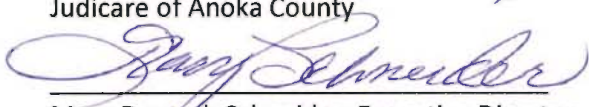
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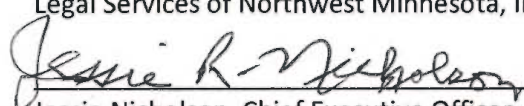
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Anishinabe Legal Services



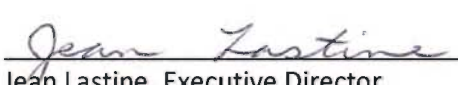
Floyd Pnewski, Executive Director
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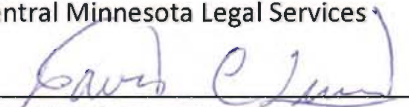
Mary Deutsch Schneider, Executive Director
Legal Services of Northwest Minnesota, Inc.



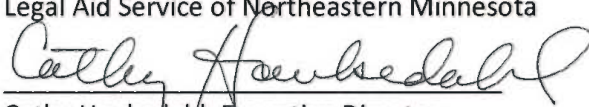
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For questions regarding these comments, please contact John Freeman, State Support Supervising Attorney, at (651) 842-6905 or jmfreeman@mnlegalservices.org.