

IOWA
LEGAL ASSISTANCE
PROGRAM
BEST PRACTICES

2009

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**IOWA LEGAL ASSISTANCE PROGRAM
BEST PRACTICES FOR THE PROVISION OF LEGAL ASSISTANCE**

TABLE OF CONTENTS

I. INTRODUCTION	4
II. LEGAL AUTHORITY.....	4
III. DEFINITIONS	4
IV. MISSION AND PURPOSE	9
V. THE TARGET POPULATIONS.....	10
VI. PRIORITY ISSUE AREAS.....	11
VII. MECHANISMS FOR REACHING TARGETED GROUPS AND ADDRESSING PRIORITY ISSUES.....	13
1. Accessibility	14
2. Outreach	14
3. Community Legal Education	15
VIII. PARTNERSHIPS AND COLLABORATIONS FOR MAXIMUM IMPACT FROM LIMITED RESOURCES AND EXPANDING RESOURCES.....	15
IX. ROLES AND RESPONSIBILITIES.....	16
1. Legal Assistance Provider.....	16
2. Area Agency on Aging	18
3. State Legal Services Developer.....	20
4. Hotline for Older Iowans.....	22
X. Appendix--Best Practice Samples	
1. Guidelines for AAA's in choosing and evaluating a provider	
2. Legal assistance provider contract	
3. Contribution policy	
4. Legal assistance program brochure	
5. Legal assistance program report form and instructions	

IOWA LEGAL ASSISTANCE PROGRAM BEST PRACTICES FOR THE PROVISION OF LEGAL ASSISTANCE

I. INTRODUCTION:

Legal problems faced by older Iowans are often more critical than those problems faced by any other segment of our population. Older Iowans in poverty are less likely to seek the assistance of an attorney. Often, it is either because they do not have cash resources to pay for services or they do not realize that they have a "legal problem."

The Older Americans Act of 1965 (hereafter, OAA) as amended, which primarily funds the Legal Assistance Program, requires that states have the capacity to improve the quality and quantity of legal programs for older individuals. These Legal Assistance Program Best Practices are meant to provide guidance to providers in the area of priority casework, coordination and collaboration to ensure cohesiveness and uniformity throughout the state's legal assistance programs. Additionally, Congress mandates that states improve the quality of their Title III-B legal programs. One proven way to ensure a quality program is to have in place best practices to define expectations for not only the legal assistance program provider, but for the state unit on aging (the Iowa Department on Aging) and the area agencies on aging as well.

These legal assistance program best practices may be amended from time to time to reflect the change in the legal needs of older Iowans as well as the mandates under the OAA, Iowa Department on Aging (hereafter, department) policy and other governing state and federal laws and regulations.

II. LEGAL AUTHORITY:

The Older Americans Act (OAA) of 1965 as amended, designates legal assistance as a priority service funded under Title III-B [42 U.S.C. Section 306(a)(2)]. As such, the funding of legal assistance by each Area Agency on Aging (hereafter, AAA) is mandatory, and services shall be accessible and available throughout each of the thirteen (13) planning and service areas in Iowa. Also see Iowa Code 231.23A(5).

III. DEFINITIONS

Adequate proportion-

A minimum amount of Title III-B OAA funds to be expended for the delivery of legal assistance. In Iowa, the minimum adequate proportion has been set at 3%.

IOWA LEGAL ASSISTANCE PROGRAM BEST PRACTICES FOR THE PROVISION OF LEGAL ASSISTANCE

Eligible Individual (client)—

Any person who meets the federal definition for program utilized. For legal assistance, an eligible individual (client) is 60 years of age or older and in greatest economic or social need.

Fee-generating case—

Any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds, or from the opposing party.

Greatest Economic Need—

The need resulting from an income level at or below the poverty line.

Greatest Social Need—

The need caused by noneconomic factors, which include: physical and mental disabilities; language barriers; and cultural, social, or geographical isolation, including isolation caused by racial or ethnic status, that restricts the ability of an individual to perform normal daily tasks; or threatens the capacity of the individual to live independently.

Legal Assistance—

Legal advice and representation provided by an attorney to older individuals with economic or social needs; and includes to the extent feasible, counseling or other appropriate assistance by a paralegal or law student under the direct supervision of an attorney; and counseling or representation by a nonlawyer where permitted by law.

Means Test—

The use of an older individual's income or resources to deny or limit that person's receipt of services.

Older Individual—

An individual who is 60 years of age or older.

IV. MISSION AND PURPOSE

The overall mission of the Title III-B legal assistance program is to provide quality advice, representation and referral to those Iowans, age 60 or older, with the greatest social and economic need. These best practices are designed to assist legal assistance programs in their growth and in meeting the minimum requirements for providing legal assistance to older Iowans. These best practices

IOWA LEGAL ASSISTANCE PROGRAM BEST PRACTICES FOR THE PROVISION OF LEGAL ASSISTANCE

provide latitude to foster creativity for individual programs to achieve the maximum effect of the program for older Iowans receiving services in each AAA. Also built into these best practices is the guiding principle that the Iowa legal assistance program is not a legal program for all older persons at all times for all issues, rather it is a targeted approach to ensure that those older Iowans who are the most vulnerable and who are at risk of losing their autonomy, dignity or independence have access to critical legal assistance. To accomplish these goals, these best practices can only be successful if the providers of legal assistance, AAA personnel and state agency staff work together.

The broad purposes of the legal assistance program in Iowa are:

- To protect the autonomy, dignity and independence of vulnerable older persons.
- To focus outreach and services particularly directed toward the most socially or economically needy older persons—those least able to advocate on their own behalf—to assist them to:
 - understand their rights;
 - exercise choice;
 - benefit from services, opportunities and entitlements;
 - meet essential needs of income, shelter, health care and nutrition;
 - and
 - maintain rights promised and protected by law.
- Assist AAA's in developing and maximizing resources, including new or additional resources, to meet the legal needs of vulnerable older persons.
- To foster cost-effective, high quality services, having maximum impact on the neediest older persons and their most critical legal needs, and which are integrated in the aging services network.
- To assist vulnerable older persons in preventing legal problems through education and outreach.
- To be accessible in each county throughout each planning and service area.

MEANS TESTING PROHIBITION: UNDER NO CIRCUMSTANCES SHALL A PERSON 60 YEARS OF AGE OR OLDER BE DENIED LEGAL SERVICES ON THE BASIS OF HIS OR HER INCOME OR ASSETS.

V. THE TARGET POPULATIONS

Recognizing that the resources of the OAA are inadequate to meet the legal needs of all older Iowans, legal assistance programs must be targeted to particularly needy populations of older Iowans. The OAA specifies needy older

IOWA LEGAL ASSISTANCE PROGRAM BEST PRACTICES FOR THE PROVISION OF LEGAL ASSISTANCE

persons, with particular emphasis on those who are low-income, low-income minorities, persons with limited English proficiency, and persons residing in rural areas.

The AAA's and legal assistance providers shall, in consultation with the Legal Services Developer, jointly develop plans to target legal assistance programs to the particularly needy persons described below.

Older individuals who shall receive priority for legal assistance services include:

- Rural
- Greatest economic need (poverty or low-income, with particular attention to low-income minority)
- Greatest social need (isolated, frail, homebound, illiterate/low literacy, institutionalized)
- Severe disabilities, including mental health issues
- Limited English proficiency
- Alzheimer's disease and related disorders (and the caretakers)
- At risk of institutionalization
- At risk of homelessness
- At risk of or under guardianship

Consideration may be given on the local level to the existence and availability of other resources to meet the legal needs of targeted populations. This target listing is not exhaustive, or in a mandatory priority order, but represents a range of possibilities.

VI. PRIORITY ISSUE AREAS

As legal assistance services are targeted to the neediest older Iowans, identifying priority issue areas becomes paramount. Providers should use their professional judgment when considering a client's individual circumstances, the merits of each case, and the likelihood of success. Consideration can be given on the local level to the existence and availability of others resources to meet the legal needs of targeted populations.

Given the prohibitions in the OAA against means testing, one effective method to achieve targeting services to the most needy is to establish particular legal issues that need to receive priority in receiving legal assistance services in order to meet the most essential legal needs of the target population.

**IOWA LEGAL ASSISTANCE PROGRAM
BEST PRACTICES FOR THE PROVISION OF LEGAL ASSISTANCE**

As specified by the OAA of 1965 as amended, AAA's and providers will give priority to legal assistance related to:

- Income
- Health care
- Long-term care
- Nutrition
- Housing and utilities
- Defense of guardianship
- Protective services
- Abuse, neglect and exploitation
- Age discrimination

The department, the AAA's and the legal assistance providers have identified the following issue areas as most critical to meeting the needs of the target populations and, therefore, shall be priority issue areas as well as the mandated issue areas described above.

INCOME/NUTRITION/BENEFITS

Social Security (Title II)
SSI (Title XVI)
Food stamps

HEALTH/LONG-TERM CARE

Medicaid
Medicare
Other health insurance
Advance directives for healthcare
End-of-life issues
Resident/tenant rights issues

HOUSING/UTILITIES

Homeownership
Shelter
Utility shut offs/Energy issues
Landlord/tenant
Fair housing issues

PROTECTIVE SERVICES

Defense of guardianship
Elder abuse, neglect and exploitation
Power of Attorney
Consumer issues

IOWA LEGAL ASSISTANCE PROGRAM BEST PRACTICES FOR THE PROVISION OF LEGAL ASSISTANCE

INDIVIDUAL RIGHTS

Age discrimination: credit and housing

— for employment, assistance should be limited to assisting an older person in recognizing an issue appropriate for the Equal Employment Opportunity Commission, Iowa Civil Rights Commission, and/or a private attorney to avoid fee-generating cases

Americans with Disabilities Act: services and long term care issues

— for employment, assistance should be limited to assisting an older person in recognizing an issue appropriate for the Equal Employment Opportunity Commission, Iowa Civil Rights Commission, and/or a private attorney to avoid fee-generating cases

Pursuant to the OAA regulations (45 CFR 1321.71(g)), a fee-generating case may not be accepted by a legal assistance provider unless other adequate representation is unavailable or there is an emergency requiring immediate legal action. Other adequate representation is deemed to be unavailable when: recovery of damages is not the principal object of the client; or a court appoints a provider; or an eligible client is seeking benefits under Title II of the Social Security Act.

Where a client and the legal issue are in different planning and service areas, the residence of the client controls which legal assistance provider serves the client.

VII. MECHANISMS FOR REACHING TARGETED GROUPS AND ADDRESSING PRIORITY ISSUES

Targeting is a commitment to serving those older persons most in need. Priority setting follows identification of target population groups, and is simply the identification of the types of cases/problems that are of greatest significance to the target populations.

Outreach is the key to implementing the targeting and priority setting goals. Outreach in its broadest sense involves a variety of strategies. “First-come-first-served” is the result of unfocused outreach. Almost by definition, the most vulnerable older persons are the most difficult to reach and serve. Only focused outreach will achieve the goal of reaching the most vulnerable older persons. Effective focused outreach is a result of joint planning by the AAA, the legal services developer and the legal assistance provider.

IOWA LEGAL ASSISTANCE PROGRAM BEST PRACTICES FOR THE PROVISION OF LEGAL ASSISTANCE

No program, no matter how well-suited to a community, will be successful if people do not know of its existence, if it is not easily accessible, and if people do not recognize the legal nature of their problems. At the same time, however, it is imperative that members of the legal profession be diligent in avoiding the appearance of soliciting clients.

In providing full use of the legal system, the system for the delivery of legal assistance must include each of the following:

1. Accessibility—

Legal assistance services, under the Title III-B program, are to be available and accessible to the target population groups identified in these best practices and as specified in the Title III-B contract between the AAA and the legal assistance provider. These services are to be available and accessible to the target population groups throughout the specific planning and service area.

2. Outreach—

- Go where the targeted populations are and develop relationships for secondary referrals from groups which serve the targeted populations. As the face of the aging population changes, revisiting plans will be crucial in order to ensure effective outreach to the most vulnerable populations. Possible secondary referral resources include:
 - Religious organizations
 - Fraternal organizations
 - Ethnic support groups
 - Department of Human Services
 - Adult protective services
 - Physicians
 - Public Housing Authority/Section 8
 - Mental health facilities
 - Literacy councils
 - Community action agencies
 - Cooperative extension service
 - Grandparent support groups
 - Rural electric co-ops
 - Postal carriers
 - Public utility workers
 - Home health care agencies
 - Non-profit services agencies

- In-service training for AAA staff and aging network groups should be

**IOWA LEGAL ASSISTANCE PROGRAM
BEST PRACTICES FOR THE PROVISION OF LEGAL ASSISTANCE**

provided by legal assistance programs and the legal services developer.

3. Community Legal Education—

Informing older persons of their legal rights in community education forums is a service that is essential for legal assistance programs to provide. Community education is a method of preventing greater legal problems by equipping older persons with knowledge that will help them avoid legal problems later. Additionally, community legal education is a method for older persons to identify that an issue is indeed a legal issue which must be addressed.

- Community legal education shall be presented to the target groups.
- Topics shall reflect the priority issues outlined above.

VIII. PARTNERSHIPS AND COLLABORATIONS FOR MAXIMUM IMPACT FROM LIMITED RESOURCES AND EXPANDING RESOURCES

Limited resources are a reality and the legal assistance program cannot be all things to all people. Effort must be made to make maximum use of all potential resources. Partnerships and collaborations must be sought in order to develop alternative avenues for legal assistance.

Some potential partnerships and collaborations include:

- Iowa Protection and Advocacy
- Volunteer lawyer programs
- State and local bar associations
- County legal aid offices
- Iowa Association of Women Attorney's
- Law schools and law school clinics
- Minority bar groups
- Large law firms
- Corporate law offices
- Attorney General/County Attorneys
- Courts
- Aging and Disability Resource Centers
- Foundations
- Iowa Lawyers Trust Account (IOLTA)

**IOWA LEGAL ASSISTANCE PROGRAM
BEST PRACTICES FOR THE PROVISION OF LEGAL ASSISTANCE**

IX. ROLES AND RESPONSIBILITIES

In keeping with the mission outlined in Section IV, the goal of these best practices is to ensure that the legal services developer and the respective AAA's, legal assistance providers and the Iowa Hotline for Older Iowans are working together to ensure the delivery of high quality services designed to address the unmet legal needs of socially or economically needy older persons throughout Iowa. To that end, set forth below are roles and responsibilities of the parties.

1. Legal Assistance Provider

- Comply with the Iowa Rules of Professional Conduct.
- Provide at no cost to clients, access to attorneys with the capacity to provide advice and representation in the areas outlined in Section VI.
- All attorneys must be licensed to practice law in the State of Iowa and must carry malpractice insurance.
- All legal staff, other than licensed attorneys, operating within the Title III-B legal assistance program, must do so under the direct and regular supervision of a licensed attorney.
- Work with the legal services developer and the AAA's to develop a method for surveying client satisfaction. Such method shall respect the client's right to confidentiality.
- Assist the legal services developer and the AAA in developing and amending as necessary a monitoring instrument. Such method shall respect the client's right to confidentiality.
- At a minimum, provide effective, high quality administrative and judicial representation for eligible individuals in the priority issue areas set forth in Section VI of these best practices.
- Use Title III-B funds or other funds as contracted from the AAA to maintain or increase, to the extent practicable, the level of legal assistance furnished to eligible individuals, and not use Title III-B funds to supplant funds from other federal or non-federal sources.
- Insure clients are provided with an opportunity to voluntarily contribute to the cost of the services they receive and ensure privacy with respect to

IOWA LEGAL ASSISTANCE PROGRAM BEST PRACTICES FOR THE PROVISION OF LEGAL ASSISTANCE

the client. Clients should be informed of the actual cost of the service and a recommended contribution amount.

- The legal service provider shall not means test for any service for which contributions are accepted or deny services to any individual who does not contribute to the cost of the service. OAA 315(b) (3). A legal assistance provider may ask about the older individual's financial circumstances as a part of the process of providing legal advice, counseling and representation or for the purpose of identifying additional resources and benefits for which the older individual may be eligible.
- Have reasonable access to the following for all appropriate staff: relevant U.S.C.A. and CFRs, local laws and regulations, state law, regulations and rules; manuals for relevant government programs, relevant support center manuals, newsletters, information and referral manuals.
- Have the capacity to provide legal assistance in the principal language spoken by clients in areas where a significant number of clients do not speak English as their principal language in accordance with the OAA.
- Provide complete quarterly reports to the AAA, while maintaining client confidentiality.
- Develop a coordination of services plan with the local Legal Services Corporation Program (Iowa Legal Aid) if the provider is not a LSC funded program as required under the OAA.
- Accept referrals from the Hotline for Older Iowans as called upon and where appropriate.
- Attempt, in cooperation with the legal services developer, to involve the private bar in legal assistance activities, including groups within the private bar furnishing services to older individuals on a pro bono or reduced fee basis.
- Develop, in cooperation with the AAA, and follow a protocol and a program policy for referral of fee generating cases pursuant to the OAA.
- Supply clients with a mechanism for filing complaints or grievances about the operation of the program.
- To the extent practical, any document preparation, execution or extended representation shall be conducted in person with the client.

IOWA LEGAL ASSISTANCE PROGRAM BEST PRACTICES FOR THE PROVISION OF LEGAL ASSISTANCE

- Present community legal education to the target groups.
- In discussing the availability of the legal assistance program, refer to the program as “no cost to the consumer”, rather than as a “free service”.
- A provider shall not engage in prohibited political activities. (Set out in 45 CFR 1321.71(h).

2. Area Agency on Aging (AAA)

Pursuant to the OAA, each AAA will work with the legal assistance provider and the legal services developer to provide leadership relative to law and aging issues in their respective planning and service areas. Assure that the focus of legal assistance services is directed to reaching and serving the target populations and in the priority issue areas identified in these best practices.

With respect to legal assistance, each AAA shall:

- Adhere to the best practices set forth in this document.
- Select the legal assistance provider(s) best able to demonstrate the experience and capacity to meet the requirements of federal and state law and regulations as well as these best practices.
- Assure that legal programs are funded in accordance with federal and state requirements and are funded at a level adequate to implement these best practices, and that legal assistance services are available throughout the planning and service area.
- Work with legal assistance providers in their development of local program plans to ensure that the primary focus of the legal assistance provider is the direct representation of clients in legal matters identified as priority issue areas in Section VI of these best practices, and that clients are comprised largely of older individuals in the target populations identified in Section V of these best practices.
- Work with the legal services developer and legal assistance providers to develop plans and strategies for reaching and serving the target populations and to assist in conducting outreach.
- Work with the legal services developer and legal assistance providers to develop a method for surveying client satisfaction while maintaining client confidentiality.

IOWA LEGAL ASSISTANCE PROGRAM BEST PRACTICES FOR THE PROVISION OF LEGAL ASSISTANCE

- Work with the legal services developer and legal assistance provider in maintaining a program monitoring instrument and in monitoring legal assistance providers on a regular basis while maintaining client confidentiality.
- Work with the legal services provider to ensure that legal assistance providers have a system in place to allow clients to file complaints or grievances about the operation of the legal assistance program. This policy will be shared with the legal services developer.
- Work with the legal services provider to review provider program policies and protocols for referral of fee-generating cases and conflicts of interest. This policy will be shared with the legal services developer.
- Ensure that the legal assistance provider has in place a policy and procedure for program income/contributions that complies with Section 315(b) of the OAA, including the requirement that all collected contributions are used to expand the legal assistance program services for which they were given and that they supplement (not supplant) Title III-B funds.
- Work with the legal services developer and legal assistance providers in building the partnerships and collaboration called for in Section VIII of these best practices to make maximum use of limited resources and to expand the availability of resources for legal assistance services. An important role for AAA's in this coordination is to provide information about local aging programs and services and to increase awareness about the legal needs of target groups in their area.
- Submit to the department the quarterly legal assistance report and report annually the amount of funds expended for legal assistance.
- Develop and review language about the legal assistance program to include in the area plan.
- Ensure that the legal services provider satisfies the service needs of older individuals identified in Section V of these best practices.
- Use outreach efforts to identify individuals in the target population that could benefit from the legal assistance program.
- Ensure that community legal education by the legal provider occurs to the target populations.

IOWA LEGAL ASSISTANCE PROGRAM BEST PRACTICES FOR THE PROVISION OF LEGAL ASSISTANCE

- In discussing the availability of the legal assistance program, refer to the program as “no cost to the consumer”, rather than as a “free service”.

3. State Legal Services Developer

In accordance with Title VII of the OAA, the department shall ensure through its legal services developer and other personnel --

- State leadership in securing and maintaining the legal rights of older individuals;
- State capacity for coordinating the provision of legal assistance;
- State capacity to provide technical assistance, training, and other supportive functions to AAA's, legal assistance providers, ombudsmen, and other persons, as appropriate;
- State capacity to promote financial management services to older individuals at risk of conservatorship;
- State capacity to assist older individuals in understanding their rights, exercising choices, benefiting from services and opportunities authorized by law, and maintaining the rights of older individuals at risk of guardianship;
- State capacity to improve the quality and quantity of legal services provided to older individuals;

The Roles and Responsibilities of the Legal Services Developer include:

- Develop working relationships, as necessary, with relevant state and federal agencies with respect to the legal needs of older individuals in order to better coordinate legal services available to older Iowans.
- In conjunction with the AAA's and the legal assistance providers, the legal services developer shall review the current monitoring tool and modify as necessary. The monitoring system shall be designed in such a way as to protect the confidential nature of the assistance provided to clients as well as client identities.
- Work, in cooperation with the AAA's and legal assistance providers, to ensure that Title III-B funds or other funds as contracted through the AAA are used to maintain or increase, to the extent practicable, the level of legal assistance furnished to eligible individuals, and to assure that Title III-B funds are not used to supplant funds from other federal or non-federal sources.
- Work with legal assistance providers and AAA's to arrange low or no cost

IOWA LEGAL ASSISTANCE PROGRAM BEST PRACTICES FOR THE PROVISION OF LEGAL ASSISTANCE

legal training as needed.

- Work with AAA's and legal assistance providers to review the current reporting system and revise, if necessary.
- Supply each legal assistance provider with technical assistance and guidance as may be necessary or requested by the AAA or legal assistance provider.
- Periodically review and update these best practices, with input from the AAA's and legal assistance providers.
- In cooperation with AAA's and legal assistance providers, the legal services developer will assist in coordinating Title III-B and legal hotline resources.
- Develop guidelines for AAA's to follow in choosing and evaluating providers of legal assistance.
- Develop and review language about the legal assistance program to include in the state plan.
- Work with the legal assistance providers, Iowa State Bar Association, private attorneys, law schools, Iowa Legal Aid, and volunteer lawyer projects to increase the availability of legal services for older Iowans and to best utilize the Title III-B funding.
- Develop a sample provider contract and voluntary contribution policy/letter as a best practice example.
- In cooperation with the AAA's, periodically review the minimum adequate proportion percentage set out in administrative rule.

4. Hotline for Older Iowans

- Comply with the Iowa Rules of Professional Conduct.
- All attorneys must be licensed to practice law in the State of Iowa and must carry malpractice insurance.
- All legal staff, other than licensed attorneys, operating within the Older Iowans Hotline must do so under the direct and regular supervision of a licensed attorney.

**IOWA LEGAL ASSISTANCE PROGRAM
BEST PRACTICES FOR THE PROVISION OF LEGAL ASSISTANCE**

- Work closely with the legal services developer on the development of an annual priority service and outreach plan.
- Present community legal education to the target groups as appropriate.
- Work with the legal services developer to develop a method for surveying client satisfaction. Such method shall respect the client's right to confidentiality.
- Use Title III-B funds or other funds as contracted from the department or the AAA's to maintain or increase, to the extent practicable, the level of legal assistance furnished to eligible individuals, and shall not use Title III-B funds to supplant funds from other federal or non-federal sources.
- Have reasonable access to the following for all appropriate staff: relevant U.S.C.A. and CFRs, local laws and regulations, state law, regulations and rules; manuals for relevant government programs, relevant support center manuals, newsletters, information and referral manuals.
- Provide referrals to Title III-B legal assistance providers or other referral resources such as an Iowa Legal Aid office, county legal aid programs, law school clinical programs, or volunteer lawyers programs as called upon and where appropriate.
- Supply clients with a mechanism for filing complaints or grievances about the operation of the program.
- Work with the legal services developer, AAA's and legal assistance providers in the coordination of Title III-B and Legal Hotline for Older Iowans resources.
- Provide counseling and advice as well as brief legal services to callers who qualify for legal assistance under the legal assistance program.
- If accepting Title III-B funds, insure that clients are provided with an opportunity to voluntarily contribute to the cost of the services they receive and ensure privacy with respect to the client. Clients should be informed of the actual cost of the service and a recommended contribution amount.