

SENATE No. 131

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act Increasing Access to More Affordable Legal Service Plans.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws is hereby amended by inserting after chapter 176H the
2 following new chapter:-

3 Chapter 176A 1/2 PROFESSIONAL LICENSING STANDARDS FOR INDIVIDUAL
4 AND FAMILY PREPAID LEGAL SERVICES PLANS.

5 Section 1. Definitions

6 The following words, as used in this chapter, shall have the following meanings:--

7 "Attorney", an attorney at law who is a member of the bar of the Commonwealth or any
8 other state.

9 "Commissioner", the commissioner of insurance.

10 "Company", a business entity organized to administer prepaid legal services plans.

11 "Covered dependents", dependents of member for whom covered legal services are
12 provided under a prepaid legal services plan.

13 "Covered legal services", legal services for which benefits are provided under a prepaid
14 legal services plan.

15 "Commissioner", the Commissioner of Insurance

16 "License", a written certificate issued by the Commissioner of Professional Licensure,
17 authorizing a person or entity to provide prepaid legal services in the Commonwealth.

18 "Licensee", an individual prepaid legal services plan sales representative or prepaid legal
19 services plan company duly licensed by the Commissioner of Professional Licensure

20 "Member", a person to whom a membership certificate has been issued.

21 "Membership certificate", a contract entered into between a prepaid legal services plan
22 company and a member under a prepaid legal services plan.

23 "Person" means an individual or a partnership, company, corporation, association, or
24 other private group.

25 "Prepaid legal company" means a person or entity offering prepaid legal services to the
26 general public or a segment of the general public.

27 "Prepaid legal services" means legal services or reimbursement for legal services
28 provided by an individual licensed or admitted to practice law in the jurisdiction in which the
29 services are to be rendered, and which are provided in return for a predetermined, specified,
30 periodic fee.

31 "Prepaid legal services plan", a plan whereby legal services are provided to members and
32 their covered dependents in accordance with the provisions of this chapter.

33 “Provider Attorney”, the designated attorney or law firm providing the legal services
34 offered in a prepaid legal services plan.

35 "Sales representative" means a person who sells or solicits prepaid legal services
36 contracts to a person on behalf of a company.

37 Section 2. Exemptions

38 For purposes of this chapter, prepaid legal plans shall not be considered insurance
39 products and prepaid legal companies and their representatives shall not be considered insurers;
40 companies and their representatives shall not be subject to the provisions of chapters 175, 175A
41 and 176H of the General Laws. The provisions of this chapter shall apply to all companies and
42 their representatives that are selling, soliciting or negotiating individual or family prepaid legal
43 plan memberships as defined by this chapter to the citizens of the Commonwealth.

44 Section 3. Prepaid legal services plan company registration

45 No person or entity shall engage in the sale of prepaid legal services plan contracts with
46 any individual residing within the boundaries of this Commonwealth nor shall they advertise
47 prepaid legal services within the boundaries of this Commonwealth without first obtaining a
48 license from the commissioner. The application for a license shall be in writing, shall be in a
49 form prescribed by the commissioner and shall contain the name, residential address and the
50 address where the business of the applicant is to be conducted, and if the applicant is a
51 partnership, association, corporation or other form of business organization, the names and
52 addresses of each member, commissioner and principal officer thereof, together with such further
53 information as the commissioner may require including, but not limited to, a description of the
54 nature of the business to be conducted, the proposed hours of operation on a daily basis and the

55 area intended to be served. The application shall also contain the criminal history, if any, of each
56 member, department, partner and principal officer, and a disclosure of any pending lawsuits,
57 settled lawsuits, and judgments related to fraud of each member, department, partner and
58 principal officer. The application must also be accompanied by a bond or letter of credit
59 acceptable to the commissioner in the amount of fifty thousand dollars, which must remain in
60 force so long as the prepaid legal services company does business in Commonwealth. The
61 amount of the bond or letter of credit may only be increased by regulation.

62 Section 4. Updated registration statements

63 No later than March first of each year, commencing immediately after registration
64 required in section three of this chapter, a prepaid legal services company registered with the
65 commissioner must file on a form prescribed by the commissioner an updated registration
66 statement to include a sworn affirmation as to continuation of the bond or letter of credit and
67 updated list of its representatives transacting business in the Commonwealth as required in
68 section three of this chapter. Contracts offering prepaid legal services must be filed with the
69 commissioner for approval prior to being offered to the general public or a segment of the
70 general public. Approval will only be withheld if the contract is false, misleading, unfair, or
71 deceptive or is in violation of this chapter or other applicable law.

72 Section 5. Solicitation of prepaid legal plans, appointment of sales person as company
73 representative; filing of name, address, and telephone number; renewal; fees; refusal or
74 revocation of appointment.

75 Before any sales or solicitation activity commences, a person seeking to be involved in
76 direct selling or direct in-person or electronic solicitation of the general public or segments of the

77 general public, on behalf of a prepaid legal services company, must be appointed a representative
78 of that prepaid legal services company by filing with the commissioner, on a form prescribed by
79 the commissioner, the appointee's name, address, and telephone number. The appointment must
80 be renewed each year no later than October first. The commissioner may collect a fee of fifty
81 dollars with each initial or renewal filing and may use the proceeds to offset the costs of
82 administering and enforcing this chapter. Appointment may be refused or revoked upon a finding
83 that a prospective representative or representative has been convicted of a crime of deceit or
84 dishonesty within the previous ten years. The commissioner may from time to time establish
85 such regulations pertaining to the conduct of the business as he may deem necessary.

86 Section 6. Sales representative; product knowledge testing

87 The Commissioner shall, in lieu of administering a property and casualty exam, develop
88 and administer a product knowledge test to all prepaid legal services plan sales representatives
89 that will be directly involved in the selling, soliciting, and negotiating of individual or family
90 prepaid legal services plans in the Commonwealth; The division shall certify the representative
91 has sufficient knowledge about the product and furnish test results to the company upon request.

92 Section 7. Prepaid legal services contract requirements

93 A legal services contract must be filed with the commissioner before it is marketed, sold,
94 offered for sale, administered, or issued in the Commonwealth. Any subsequent endorsement or
95 attachment to the contract must also be filed with the commissioner before the endorsement or
96 attachment is delivered to legal services contract holders.

97 A legal services contract marketed, sold, offered for sale, administered, or issued in this
98 state must:

99 (a) be written, printed, or typed in clear, understandable language that is easy to read;

100 (b) include the name and full address of the company;

101 (c) include the purchase price of the contract and the terms under which the contract is
102 sold;

103 (d) include the terms and restrictions governing cancellation of the contract by the
104 company or the legal services contract holder;

105 Additionally, a legal services contract marketed, sold, offered for sale, administered, or
106 issued in this state must identify:

107 (a) any administrator, if the administrator is not the company;

108 (b) the name of the legal services contract holder;

109 (c) include the amount of any deductible or copayment;

110 (d) specify the legal services and other benefits to be provided under the contract, and any
111 limitation, exception, or exclusion;

112 (e) specify the legal services, if any, for which the company will provide reimbursement
113 and the amount of that reimbursement;

114 (f) specify any restriction governing the transferability of the contract or the assignment
115 of benefits;

116 (g) include the duties of the legal services contract holder;

117 (h) include the contact information for the commissioner, including the commissioner's
118 toll-free number and electronic mail address, as well as a statement that the commissioner
119 regulates the company and the company's sales representatives;

120 (i) explain the method to be used in resolving the legal services contract holder's
121 complaints and grievances;

122 (j) explain how legal services may be obtained under the legal services contract;

123 (k) include a provision stating that no change in the contract is valid until the change has
124 been approved by an executive officer of the company and unless the approval is endorsed or
125 attached to the contract;

126 (l) include any eligibility and effective date requirements, including a definition of
127 eligible dependents and the effective date of their coverage;

128 (m) include the conditions under which coverage will terminate;

129 (n) explain any subrogation arrangements if any are included;

130 (o) contain a payment provision that provides for a grace period of at least 31 days;

131 (p) include conditions under which contract rates may be modified; and

132 (q) include any other items required by the commissioner as determined by regulation

133 Section 8. Provider attorney requirements

134 A provider attorney must:

135 (a) be licensed in the jurisdiction in which the legal services are performed;

136 (b) be in good standing with the entity that licenses attorneys in that jurisdiction; and

137 (c) maintain professional liability and errors and omissions insurance with minimum
138 annual limits of \$100,000 for each occurrence and \$300,000 in the aggregate.

139 Section 9. Company interference with attorney's duties prohibited

140 A prepaid legal services company may not interfere with the attorney-client relationship
141 or with the provider attorney's independent exercise of professional judgment.

142 Section 10. Company records

143 A company shall maintain accurate accounts, books, and other records regarding
144 transactions regulated under this chapter. The company's records must include:

145 (a) a copy of each unique form of legal services contract to be filed with the
146 commissioner

147 (b) the name and address of each legal services contract holder;

148 (c) a list of the sales representatives authorized by the company to market, sell, or offer to
149 sell the company's legal services contracts;

150 (d) a copy of each contract entered into between the company and a provider attorney;
151 and

152 (e) a list of complaints the company has received from legal services contract holders,
153 including the name of the sales representative involved in the transaction leading to the
154 complaint.

155 The records required by this section may be maintained in an electronic medium or
156 through other recordkeeping technology. If a record is not in a hard copy, the company must be
157 able to reformat the record into a legible hard copy at the request of the commissioner. Except as
158 provided, a company shall retain the records required by this section until at least the second
159 anniversary of the termination date of the specified period of coverage under the legal services
160 contract. A company that discontinues business in the Commonwealth shall retain its records
161 until the company furnishes the commissioner with proof satisfactory to the commissioner that
162 the company has discharged all obligations to legal services contract holders in the
163 Commonwealth.

164 Section 11. Terminating a prepaid legal services contract

165 A legal services contract holder may terminate the legal services contract if the legal
166 services contract holder provides the company with written notice of the legal services contract
167 holder's intention of terminating the contract not later than the seventh day after the date the legal
168 services contract holder receives the contract.

169 Section 12. Voiding a prepaid legal services contract

170 If a legal services contract holder terminates a legal services contract in accordance with
171 Section 12 of this chapter and the holder has not sought legal services under the contract before
172 the contract is terminated, the contract is void. A legal services contract holder may void the
173 legal services contract at a later time as provided by the contract. If a legal services contract is
174 voided, the company shall refund to the legal services contract holder or credit to the account of
175 the legal services contract holder the full purchase price of the contract. If the company does not
176 pay the refund or credit the legal services contract holder's account before the 60th day after the

177 date the contract is voided, the company is liable to the legal services contract holder for a
178 penalty each month an amount remains outstanding. The monthly penalty may not exceed 10
179 percent of the amount outstanding. The right to void a legal services contract is not transferable.

180 Section 13. Canceling a prepaid legal services contract

181 A company may cancel a legal services contract by mailing a written notice of
182 cancellation to the legal services contract holder at the legal services contract holder's last known
183 address according to the records of the company. The company must mail the notice before the
184 fifth day preceding the effective date of the cancellation. The notice must state the effective date
185 of the cancellation and the reason for the cancellation. The company is not required to provide
186 prior notice of cancellation if the legal services contract is canceled because of:

- 187 (a) nonpayment of the consideration for the contract;
- 188 (b) a material misrepresentation by the legal services contract holder to the company;
- 189 (c) a substantial breach of a duty by the legal services contract holder; or
- 190 (d) cancellation of the contract by the legal services contract holder.

191 Section 14. Complaints

192 A subscriber aggrieved by a prepaid legal company or its representative may file a
193 complaint with the Consumer Complaint Information Section under the Public Protection Bureau
194 in the Office of the Massachusetts Attorney General.

195 SECTION 2. The commissioner shall prepare and institute a legal services exam to
196 prospective prepaid legal services plan representatives, as required by section 6 not later than 90
197 days after the effective date of this act.