
A BILL FOR AN ACT

RELATING TO CONSUMER PROTECTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 488-1, Hawaii Revised Statutes, is
2 amended by adding two new definitions to be appropriately
3 inserted and to read as follows:

4 "Accumulation or payment of money" or "accumulates funds"
5 means the payment of funds by a member to the plan.

6 "Commissioner" means the insurance commissioner."

7 SECTION 2. Section 488-2, Hawaii Revised Statutes, is
8 amended by amending subsections (a) and (b) to read as follows:

9 "(a) This chapter shall apply to all plans in the State
10 other than:

11 ~~[-(1) Plans in which either the group or the plan~~
12 ~~administrator is otherwise subject to regulation under~~
13 ~~chapter 431 or 432;~~

14 ~~-(2)]~~ (1) Plans in which any party to the plan is the
15 federal government or any agency thereof; or

16 ~~[-(3)]~~ (2) Any employer-employee plan that is subject to the
17 federal Employee Retirement Income Security Act of
18 1974, Public Law 93-406.



1 (b) The commissioner shall have jurisdiction to enforce
2 this chapter. The operation of all plans subject to this
3 chapter shall also be subject to chapters 480, part I of chapter
4 481, 481A, and 481B, 481C, and other provisions of law that may
5 be applicable. Chapters 431 and 432 shall not apply to any
6 plans or the operations thereof that are subject to this
7 chapter, except as provided in sections 488-4, 488-5, and 488-
8 6."

9 SECTION 3. Section 488-3, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "~~§~~488-3 **Filing and other requirements.** (a) Sixty
12 days prior to the implementation of any plan and the
13 accumulation or payment of money thereunder, all plan documents
14 shall be submitted in writing ~~[to the department.]~~ for approval
15 by the commissioner.

16 (b) ~~[Such]~~ The documentation required by subsection (a)
17 shall contain in writing the following:

- 18 (1) A brief statement of the plan's financial structure,
19 including a statement of the amount of prepayment,
20 ~~[and]~~ other charges or dues to be paid by plan
21 members, and the manner in which ~~[such amount is]~~ the
22 amounts are to be paid[-];



- 1 (2) A statement of the amount of benefits, legal services,
2 or reimbursement for legal services to be furnished
3 each member of a plan, and the period during which it
4 will be furnished; and, if there are exceptions,
5 reductions, exclusions, limitations, or restrictions
6 of [~~such~~] benefits, legal services, or reimbursements,
7 a detailed statement of [~~such~~] the exceptions,
8 reductions, exclusions, limitations, or
9 restrictions[-];
- 10 (3) A statement of the terms and conditions upon which the
11 plan may be canceled or otherwise terminated by the
12 group, the plan administrator, the persons furnishing
13 legal services, or the member; provided that for any
14 [~~such~~] cancellation or termination, other than by a
15 member, there shall be provision made for the
16 disposition of funds accumulated under the plan[-];
- 17 (4) A statement describing the applicability or
18 nonapplicability of the benefits of the plan to the
19 family dependents of the member[-];
- 20 (5) A statement of the period of grace which will be
21 allowed the member or the member's group for making
22 any payment due under the plan[-];



1 (6) A statement describing a procedure for settling
2 disputes between or among the group, the plan
3 administrator, the persons furnishing legal services,
4 and the member[-]; and

5 (7) A statement that the plan includes the endorsements
6 thereon and attached papers, if any, and contains the
7 entire contract or contracts to be used [~~between~~]
8 among all parties to a plan.

9 Any amendments or changes to the documents filed under
10 paragraphs (1) to (7) shall be filed with the [~~department~~]
11 commissioner for approval sixty days before they take effect.

12 All documents filed under this section shall be public
13 documents."

14 SECTION 4. Section 488-4, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§488-4 Accumulated funds, protection, violation.** (a)

17 Any plan [~~which~~] that accumulates funds from payments of
18 premiums prior to [~~the payment of such~~] paying those funds to
19 [~~the~~] persons providing legal services shall meet the
20 requirements of this section.



1 (b) The plan administrator shall have the responsibilities
2 of a trustee for all funds received or collected under this
3 chapter.

4 (c) The plan administrator, upon receipt of premium funds
5 intended for payment to a person providing legal services
6 pursuant to this chapter, shall maintain the funds at all times
7 in a federally insured account with a bank, savings and loan
8 association, or financial services loan company located in
9 Hawaii, separate from the plan's own funds or funds held by the
10 plan administrator in any other capacity, in an amount at least
11 equal to the funds collected and unpaid to the persons providing
12 legal services, unless otherwise approved by the commissioner.
13 Only additional funds that are reasonably necessary to pay bank,
14 savings and loan association, or financial services loan company
15 charges may be commingled with premium funds accumulated
16 pursuant to this section. If the bank, savings and loan
17 association, or financial services loan company account is an
18 interest earning account, the plan shall not retain the interest
19 earned on accumulated funds for the plan or plan administrator's
20 own use or benefit without the prior written consent of the
21 person entitled to the funds. A plan trustee account shall be
22 designated on the records of the bank, savings and loan



1 association, or financial services loan company as a "trustee
2 account established pursuant to section 488-4, Hawaii Revised
3 Statutes", or words of similar import.

4 (d) The plan administrator shall obtain a bond in an
5 amount and form approved by the [~~department~~] commissioner which
6 shall be executed by the plan administrator and a surety company
7 authorized to do business in the State as a surety. The bond
8 shall be to the benefit of the members of the plan and shall be
9 filed with the [~~department.~~] commissioner. In lieu of the bond
10 required by this section, the [~~department shall~~] commissioner
11 may accept letters of credit, certificates of deposits, or other
12 evidences of security in form and amounts deemed appropriate by
13 the [~~department.~~] commissioner.

14 (e) Any plan administrator who, not being lawfully
15 entitled to do so, diverts or appropriates funds accumulated
16 pursuant to this section or any portion thereof to the plan or
17 plan administrator's own use, shall be subject to penalties as
18 provided by law."

19 SECTION 5. Section 488-5, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "§488-5 Annual exhibits; examination by [~~director.~~]
22 commissioner. (a) Each plan shall file with the [~~director of~~



1 ~~commerce and consumer affairs]~~ commissioner within [~~thirty~~
2 ~~sixty~~ days after the end of its fiscal year [~~a statement under~~
3 ~~oath in such form as the director prescribes containing:~~

4 ~~(1) A statement setting forth the total amount of gross~~
5 ~~receipts and expenditures of the plan during its~~
6 ~~fiscal year;~~

7 ~~(2) The assets and liabilities of the plan at the close of~~
8 ~~its fiscal year; and~~

9 ~~(3) The profit and loss of the plan during its fiscal~~
10 ~~year.]~~

11 an income statement and balance sheet compiled, reviewed, or
12 audited by a certified public accountant.

13 (b) The powers, authorities, and duties relating to
14 examinations vested in and imposed upon the [~~insurancee]~~
15 commissioner under chapter 431 [~~are extended to and imposed upon~~
16 ~~the director in]~~ apply with respect to examinations of [~~the]~~
17 plans subject to this section; provided that no examination
18 shall attempt to obtain or inspect written or oral information
19 or documents in violation of the rules for client-lawyer
20 confidentiality as contained in the Hawaii rules of professional
21 conduct adopted by the supreme court."



1 SECTION 6. Section 488-7, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[~~4~~]488-7[~~4~~] **Failure to comply; penalty.** (a) Any plan
4 [~~which~~] that neglects or refuses to comply with this chapter
5 shall be notified in writing by the [~~director of commerce and~~
6 ~~consumer affairs~~] commissioner of the neglect or refusal, and of
7 the need to take corrective action[~~, if~~] within seven days. If
8 the neglect or refusal continues for seven days after
9 notification, the plan, group, or plan administrator may be
10 fined not more than \$1,000. Every day's neglect or refusal
11 after the expiration of seven days shall be a separate offense.

12 (b) The commissioner may deny, suspend, revoke, or refuse
13 to approve any plan or plan amendments and may levy civil
14 penalties as allowed by chapters 431, 432, 480, 481A, 481B, and
15 481C, and any other applicable law for any violation of this
16 chapter."

17 SECTION 7. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 8. This Act shall take effect on July 1, 2010.

20



Report Title:

Prepaid Legal Services Plans

Description:

Updates regulation of prepaid legal services plans. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

