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S .B. NO. 2701

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# 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  
17           the federal Employee Retirement Income Security Act of  
18           1974, Public Law 93-406.

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1           (b) The commissioner shall have jurisdiction for enforcing  
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           "~~[f]~~§488-3~~[f]~~ **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 documentation shall contain in writing the  
17 following:

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

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

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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 all  
8 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 accumulates funds prior to the payment of such  
18 funds to the persons providing legal services shall meet the  
19 requirements of this section.

20 (b) The plan administrator shall have the responsibilities  
21 of a trustee for all funds received or collected under this  
22 chapter.

1        (c) The plan administrator, upon receipt of the funds,  
2 shall maintain the funds at all times in a federally insured  
3 account with a bank, savings and loan association, or financial  
4 services loan company situated in Hawaii, separate from the  
5 plan's own funds or funds held by the plan administrator in any  
6 other capacity, in an amount at least equal to the funds  
7 collected and unpaid to the persons providing legal services,  
8 unless otherwise approved by the commissioner. Only such  
9 additional funds as may be reasonably necessary to pay bank,  
10 savings and loan association, or financial services loan company  
11 charges may be commingled with the premium funds. If the bank,  
12 savings and loan association, or financial services loan company  
13 account is an interest earning account, the plan may not retain  
14 the interest earned on such funds for the plan or plan  
15 administrator's own use or benefit without the prior written  
16 consent of the person entitled to such funds. A plan trustee  
17 account shall be designated on the records of the bank, savings  
18 and loan association, or financial services loan company as a  
19 "trustee account established pursuant to section 488-4, Hawaii  
20 Revised Statutes", or words of similar import.

21        (d) The plan administrator shall obtain a bond in an  
22 amount and form approved by the [department] commissioner which

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1 shall be executed by the plan administrator and a surety company  
2 authorized to do business in the State as a surety. The bond  
3 shall be to the benefit of the members of the plan and shall be  
4 filed with the [~~department.~~] commissioner. In lieu of the bond  
5 required by this section, the [~~department shall~~] commissioner  
6 may accept letters of credit, certificates of deposits, or other  
7 evidences of security in form and amounts deemed appropriate by  
8 the [~~department.~~] commissioner.

9 (e) Any plan administrator who, not being lawfully  
10 entitled to such funds, diverts, or appropriates such funds or  
11 any portion of them to the plan or plan administrator's own use,  
12 shall be subject to penalties as provided by law."

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

15 **"§488-5 Annual exhibits; examination by [~~director.~~]**  
16 **commissioner.** (a) Each plan shall file with the [~~director of~~  
17 ~~commerce and consumer affairs~~] commissioner within [~~thirty~~]  
18 sixty days after the end of its fiscal year [~~a statement under~~  
19 ~~oath in such form as the director prescribes containing:~~

20 ~~(1) A statement setting forth the total amount of gross~~  
21 ~~receipts and expenditures of the plan during its~~  
22 ~~fiscal year;~~

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

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

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

7       (b) The powers, authorities, and duties relating to  
8       examinations vested in and imposed upon the [~~insurance~~]  
9       commissioner under chapter 431 [~~are extended to and imposed upon~~  
10       ~~the director in~~] apply with respect to examinations of the  
11       plans; provided that no examination shall attempt to obtain or  
12       inspect written or oral information or documents in violation of  
13       the rules for client-lawyer confidentiality as contained in the  
14       Hawaii rules of professional conduct adopted by the supreme  
15       court."

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

18       "~~[~~488-7~~]~~ **Failure to comply; penalty.** (a) Any plan  
19       which neglects or refuses to comply with this chapter shall be  
20       notified in writing by the [~~director of commerce and consumer~~  
21       ~~affairs~~] commissioner of the neglect or refusal, and of the need  
22       to take corrective action~~[~~] within seven days; if the neglect


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1 or refusal continues for seven days after notification, the  
2 plan, group, or plan administrator may be fined not more than  
3 \$1,000. Every day's neglect or refusal after the expiration of  
4 seven days shall be a separate offense.

5 (b) The commissioner may deny, suspend, revoke, or refuse  
6 to approve any plan or plan amendments and may levy civil  
7 penalties as allowed by chapters 431, 432, 480, 481A, 481B,  
8 481C, and any applicable law for any violation of this chapter."

9 SECTION 7. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

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

12  
13 INTRODUCED BY:   
14 BY REQUEST



**Report Title:**

Prepaid Legal Services Plans

**Description:**

Updates regulation of prepaid legal services plans.

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO CONSUMER PROTECTION.

PURPOSE: To modernize the laws regulating prepaid legal services plans by adding new definitions, deleting the exemption for insurers regulated under chapters 431 and 432, Hawaii Revised Statutes (HRS), clarifying that plan documents must be filed with the Insurance Commissioner (Commissioner), requiring the plan administrator to act as a trustee for funds collected by the plan and to maintain a trust account, and allowing the Commissioner to suspend, revoke, or fine any plan that fails to comply with law.

MEANS: Amend sections 488-1, 488-2(a) and (b), 488-3, 488-4, 488-5, and 488-7, HRS.

JUSTIFICATION: Prepaid legal services plans have a low rate of compliance with Hawaii law.

The Department has received complaints from consumers about prepaid legal services plans. The amendments are necessary to allow the Department to increase its ability to regulate these plans and to enforce these laws.

Prepaid legal services plans are currently regulated by chapter 488, with certain exceptions. One of the current exceptions creates an exemption for plans where either the group or the plan administrator is an insurer regulated under chapter 431 or 432, HRS. This will clarify that all plans are required to register with the Commissioner.

This bill also clarifies the current practice that plans file plan documents and amendments with the Commissioner.

Impact on the public: This bill will increase consumer protection for the public and for members of prepaid legal services plans.

Impact on the department and other agencies: These amendments reduce confusion and inefficiency in implementing Hawaii laws pertaining to prepaid legal services plans.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: CCA-106.

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: July 1, 2010.