
A BILL FOR AN ACT

RELATING TO CONSUMER PROTECTION.

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

1 SECTION 1. Chapter 488, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By adding two new definitions to section 488-1 to be
4 appropriately inserted and to read:

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

7 "Commissioner" means the insurance commissioner."

8 2. By amending subsections (a) and (b) in section 488-2,
9 to read:

10 "(a) This chapter shall apply to all plans in the [State]
11 state other than:

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

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



1 ~~[(3)]~~ (2) Any employer-employee plan that is subject to the
2 federal Employee Retirement Income Security Act of
3 1974, Public Law 93-406.

4 (b) The commissioner shall have jurisdiction to enforce
5 this chapter. The operation of all plans subject to this
6 chapter shall also be subject to chapters 480, part I of chapter
7 481, 481A, and 481B, 481C, and other provisions of law that may
8 be applicable. Chapters 431 and 432 shall not apply to any
9 plans or the operations thereof that are subject to this
10 chapter, except as provided in sections 488-4, 488-5, ~~[and]~~ 488-
11 6 ~~[-]~~, and 488-7."

12 3. By amending section 488-3 to read:

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

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

20 (1) A brief statement of the plan's financial structure,
21 including a statement of the amount of prepayment,
22 ~~[and]~~ other charges or dues to be paid by plan



1 members, and the manner in which [~~such amount is~~] the
2 amounts are to be paid[-];

3 (2) A statement of the amount of benefits, legal services,
4 or reimbursement for legal services to be furnished
5 each member of a plan, and the period during which it
6 will be furnished; and, if there are exceptions,
7 reductions, exclusions, limitations, or restrictions
8 of [~~such~~] benefits, legal services, or reimbursements,
9 a detailed statement of [~~such~~] the exceptions,
10 reductions, exclusions, limitations, or
11 restrictions[-];

12 (3) A statement of the terms and conditions upon which the
13 plan may be canceled or otherwise terminated by the
14 group, the plan administrator, the persons furnishing
15 legal services, or the member; provided that for any
16 [~~such~~] cancellation or termination, other than by a
17 member, there shall be provision made for the
18 disposition of funds accumulated under the plan[-];

19 (4) A statement describing the applicability or
20 nonapplicability of the benefits of the plan to the
21 family dependents of the member[-];



1 (5) A statement of the period of grace which will be
2 allowed the member or the member's group for making
3 any payment due under the plan[-];

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

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

12 Any amendments or changes to the documents filed under
13 paragraphs (1) to (7) shall be filed with the [~~department~~]
14 commissioner for approval at least sixty days before they take
15 effect. All documents filed under this section shall be public
16 documents."

17 4. By amending section 488-4 to read:

18 "§488-4 **Accumulated funds, protection, violation.** (a)

19 Any plan [~~which~~] that accumulates funds from payments of
20 premiums prior to [~~the payment of such~~] paying those funds to
21 [~~the~~] persons providing legal services shall meet the
22 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] state as a surety. The
8 bond shall be to the benefit of the members of the plan and
9 shall be filed with the [department.] commissioner. In lieu of
10 the bond required by this section, the [department shall]
11 commissioner may accept letters of credit, certificates of
12 deposits, or other evidences of security in form and amounts
13 deemed appropriate by 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 5. By amending section 488-5 to read:

20 "§488-5 Annual exhibits; examination by [director.]
21 commissioner. (a) Each plan shall file with the [director of
22 commerce and consumer affairs] commissioner within [thirty]



1 sixty days after the end of its fiscal year [~~a statement under~~
2 ~~oath in such form as the director prescribes containing:~~

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

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

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

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

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



1 6. By amending section 488-7 to read:

2 "~~[488-7]~~ **Failure to comply; penalty.** (a) Any plan
3 ~~[which]~~ that neglects or refuses to comply with this chapter
4 shall be notified in writing by the ~~[director of commerce and~~
5 ~~consumer affairs]~~ commissioner of the neglect or refusal, and of
6 the need to take corrective action~~[, if]~~ within seven days. If
7 the neglect or refusal continues for seven days after
8 notification, the plan, group, or plan administrator may be
9 fined not more than \$1,000. Every day's neglect or refusal
10 after the expiration of seven days shall be a separate offense.

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

16 SECTION 2. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 3. This Act shall take effect on July 1, 2010.



Report Title:

Prepaid Legal Services Plans

Description:

Updates regulation of prepaid legal services plans. (SB2701
HD1)

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

