

CHAPTER 488
LEGAL SERVICE PLANS

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Note

Chapter heading amended by L 2011, c 186, §2.

Law Journals and Reviews

Prepaid Legal Service: Its Development and Future. 11 HBJ 87.

Prepaid Legal Service: Its Development and Future, Part II. 12 HBJ 3.

" **§488-1 Definitions.** As used in this chapter:

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

"Commissioner" means the insurance commissioner of the department of commerce and consumer affairs.

"Legal service plan" or "plan" means any arrangement by which a person as defined in section 431:1-212, or entity, not otherwise authorized to engage in the practice of law, offers to provide or arranges for the provision of legal services in exchange for any valuable consideration that is paid to the plan.

"Plan administrator" means those persons who have discretionary authority for the management of the plan or for the collection, management, or disbursement of plan moneys. [L 1976, c 156, pt of §1; am L 1982, c 204, §8; am L 1992, c 19, §1; am L 2008, c 19, §73; am L 2010, c 47, §1(1); am L 2011, c 186, §3]

Revision Note

Definitions rearranged.

Attorney General Opinions

Prepaid legal service plan whose membership is open to the public is a "group legal service plan". Att. Gen. Op. 86-22.

" **§488-2 Applicability; other statutes, rules of court.** (a)

This chapter shall apply to all plans in the State other than:

- (1) Plans in which any party to the plan is the federal government or any agency thereof; or
- (2) Any employer-employee plan that is subject to the federal Employee Retirement Income Security Act of 1974, Public Law 93-406.

Plans that are owned and operated by an insurer subject to chapter 431 shall be exempt from the requirements of this

chapter; provided that the insurer shall comply with the provisions of chapter 431 and file a statement certifying compliance with chapter 431.

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

(c) No plan subject to this chapter shall contravene rules of court adopted by the Hawaii supreme court. [L 1976, c 156, pt of §1; am L 2008, c 19, §74; am L 2010, c 47, §1(2); am L 2011, c 186, §4]

" **§488-3 Certificate of authority; authority issued or denied; plan termination.** (a) Before conducting business in this State, a plan shall submit for approval with the commissioner an application for a certificate of authority, shall file documentation with the commissioner, and shall pay to the commissioner a fee as provided under section 431:7-101.

(b) The documentation required by subsection (a) shall contain in writing the following:

- (1) A brief statement of the plan's financial structure, including a statement of the amount of prepayment, other charges or dues to be paid by plan members, and the manner in which the amounts are to be paid;
- (2) A statement of the amount of benefits, legal services, or reimbursement for legal services to be furnished each member of a plan, and the period during which they will be furnished; and, if there are exceptions, reductions, exclusions, limitations, or restrictions of benefits, legal services, or reimbursements, a detailed statement of the exceptions, reductions, exclusions, limitations, or restrictions;
- (3) A statement of the terms and conditions upon which the plan may be canceled or otherwise terminated by the group, the plan administrator, the persons furnishing legal services, or the member; provided that for any cancellation or termination other than by a member, there shall be provision made for the disposition of funds accumulated under the plan;
- (4) A statement describing the applicability or nonapplicability of the benefits of the plan to the family dependents of the member;

- (5) A statement of the period of grace that will be allowed the member or the member's group for making any payment due under the plan;
- (6) A statement describing a procedure for settling disputes between or among the group, the plan administrator, the persons furnishing legal services, and the member;
- (7) A statement that the plan includes the endorsements thereon and attached papers, if any, and contains the entire contract or contracts to be used among all parties to a plan, including the executed written agreement between the plan and any person providing legal services to the plan; and
- (8) A listing of the owners, operators, officers, and plan administrator of the plan, including the current business address, home address, mailing address, business phone number, business fax number, business electronic mail address, business website address, and home phone number.

Any amendments or changes to the documents filed under paragraphs (1) to (8) shall be filed with the commissioner for approval at least sixty days before they take effect. All documents filed under this section shall be public documents.

(c) If the commissioner finds that a plan has met the requirements of this section, the commissioner shall issue to it a proper certificate of authority.

(d) If the commissioner finds that a plan has not met the requirements of this section, the commissioner shall deny the plan a certificate of authority within a reasonable length of time following filing of the application by the plan.

(e) If the plan is canceled or otherwise terminated by the group, the plan administrator, or the persons furnishing legal services, the plan shall notify the commissioner in writing at least sixty days prior to the termination of the plan of the fact of plan termination and the provisions made for the disposition of funds accumulated under the plan. [L 1976, c 156, pt of §1; gen ch 1985; am L 2010, c 47, §1(3); am L 2011, c 186, §5]

" **§488-4 Accumulated funds, protection, violation.** (a) The plan administrator shall have the responsibilities of a trustee for all funds received, accumulated, or collected under this chapter.

(b) The plan administrator, upon receipt of funds intended for payment to a person providing legal services pursuant to this chapter, shall maintain the funds at all times in a federally insured account with a bank, savings and loan

association, or financial services loan company located in Hawaii, separate from the plan's own funds or funds held by the plan administrator in any other capacity, in an amount at least equal to the funds collected and unpaid to the persons providing legal services, unless otherwise approved by the commissioner. Only additional funds that are reasonably necessary to pay bank, savings and loan association, or financial services loan company charges may be commingled with the funds accumulated pursuant to this section. If the bank, savings and loan association, or financial services loan company account is an interest earning account, the plan shall not retain the interest earned on accumulated funds for the plan or plan administrator's own use or benefit without the prior written consent of the person entitled to the funds. A plan trustee account shall be designated on the records of the bank, savings and loan association, or financial services loan company as a "trustee account established pursuant to section 488-4, Hawaii Revised Statutes", or words of similar import.

(c) The plan administrator shall obtain a \$100,000 bond, which shall be executed by the plan administrator and a surety company authorized to do business in the State as a surety.

The bond shall run to the State for the benefit of any claimants against the plan to secure the faithful performance of the obligations of the plan. The aggregate liability of the surety shall not exceed the principal sum of the bond. The plan administrator shall provide the commissioner with proof of the bond at the time of the initial request for approval and at any time thereafter as requested by the commissioner. The plan shall not release the bond without the commissioner's approval. In lieu of the bond required by this section, the commissioner may accept letters of credit, certificates of deposits, or other evidence of security in form and amounts deemed appropriate by the commissioner.

(d) Any person, including a plan administrator, owner, operator, officer, employee, or representative who, not being lawfully entitled to do so, diverts or appropriates funds accumulated pursuant to this section or any portion of accumulated funds for the person's own use, shall be subject to penalties as provided by law. [L 1976, c 156, pt of §1; am L 1992, c 78, §2; am L 2010, c 47, §1(4); am L 2011, c 186, §6]

" **§488-5 Annual exhibits; examination by commissioner.** (a) Each plan shall file with the commissioner within sixty days after the end of its fiscal year an income statement and balance sheet compiled, reviewed, or audited by a certified public accountant.

(b) The powers, authorities, and duties relating to examinations vested in and imposed upon the commissioner under chapter 431 apply with respect to examinations of plans subject to this section; provided that no examination shall attempt to obtain or inspect written or oral information or documents in violation of the rules for client-lawyer confidentiality as contained in the Hawaii rules of professional conduct adopted by the supreme court. [L 1976, c 156, pt of §1; am L 1982, c 204, §8; am L 1983, c 124, §17; am L 2008, c 19, §75; am L 2010, c 47, §1(5)]

" **§488-6 Investments of certain plans.** No plan promising or offering to pay for legal services in an amount equal to or in excess of \$25 a year shall invest any of its assets other than as authorized and provided for in respect to domestic insurance companies and societies under chapters 431 and 432, which provisions are hereby extended to and made applicable to prepaid legal service plans. [L 1976, c 156, pt of §1; am L 2008, c 19, §76]

" **§488-7 Failure to comply; penalty.** (a) Any plan that does not comply with this chapter shall be notified in writing by the commissioner of the noncompliance and of the need to take corrective action within seven days. If the noncompliance continues for seven days after notification, the plan or plan administrator may be fined not more than \$1,000 per day for each day of noncompliance.

(b) In addition to penalties provided in subsection (a), the commissioner may deny, suspend, revoke, or refuse to approve the certificate of authority of any plan or any plan amendments.

(c) If the commissioner takes any action pursuant to subsection (b), the commissioner shall notify the applicant or licensee in writing of the reason for that action. The applicant or licensee may submit a written request within ten days of the date of receipt of the notice for a hearing before the commissioner to determine the propriety of the commissioner's action. A hearing pursuant to this subsection shall be held within thirty days of receipt of the written request, unless postponed by mutual consent, and shall be conducted pursuant to chapter 91.

(d) If the commissioner has cause to believe that any plan is violating or is about to violate any provision of this chapter or any order of the commissioner, the commissioner may issue a cease and desist order to enforce compliance with this chapter or any order of the commissioner, or may bring an action in any court of competent jurisdiction to enjoin the plan from continuing the violation. The commissioner may order or

petition the court to order restitution on behalf of persons aggrieved by a violation of this chapter and an assessment of a monetary penalty against any plan, plan administrator, or owner, operator, or officer of the plan for violation of this chapter or an order of the commissioner. [L 1976, c 156, pt of §1; am L 1982, c 204, §8; am L 1983, c 124, §17; am L 2010, c 47, §1(6); am L 2011, c 186, §7]

" **[\$488-8] Access to records.** (a) Every plan and its owners, operators, officers, employees, and representatives shall:

- (1) Be subject to investigation or examination by the commissioner;
- (2) Produce and make freely accessible to the commissioner all accounts, records, documents, and files in the person's possession or control relating to the subject of the investigation or examination; and
- (3) Cooperate with any investigation or examination by the commissioner.

(b) If the commissioner finds the accounts or records of a plan, or of its owners, operators, officers, employees, or representatives, to be inadequate, improperly kept, or improperly posted, and if the plan has failed to correct the accounts or records after the commissioner has given the plan written notice and a reasonable opportunity to do so, the commissioner may employ experts to rewrite, post, or balance the accounts at the expense of the plan being examined.

(c) A plan administrator shall provide a written response within seven days to any written inquiry made by the commissioner. The response shall be more than an acknowledgment that the commissioner's communication was received and shall adequately address the concerns stated in the communication. [L 2011, c 186, pt of §1]

" **[\$488-9] Records and reports.** (a) The commissioner shall preserve in permanent form records and reports of the commissioner's proceedings, hearings, investigations, and examinations and shall file the records in the commissioner's office.

(b) The commissioner's records and filings in the commissioner's office shall be open to public inspection, except as otherwise provided in this chapter.

(c) The commissioner shall maintain the confidentiality of any documents or information received from the National Association of Insurance Commissioners, the federal government, insurance regulatory agencies of foreign countries, or insurance departments of other states, territories, and commonwealths that

are confidential in the jurisdiction of origin. Documents and records subject to this subsection shall be confidential and privileged, shall not be made public, shall not be subject to subpoena or discovery, and shall not be admissible as evidence in any private civil action, and neither the commissioner nor any other person who received documents, materials, or other information subject to this subsection while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to this subsection.

This subsection shall not be construed to limit the commissioner's authority to use any necessary documents, materials, or other information in furtherance of any regulatory or legal action brought as part of the commissioner's official duties. The commissioner may share information, including otherwise confidential information, with the National Association of Insurance Commissioners, the federal government, insurance regulatory agencies of foreign countries, or insurance departments of other states, territories, and commonwealths if the statutes or regulations of the jurisdiction receiving the information require the receiving person or entity to maintain the same level of confidentiality as required under this subsection and other applicable law.

(d) The commissioner shall not disclose any information that is protected from disclosure by law other than as provided in subsection (c). [L 2011, c 186, pt of §1]