

SENATE No. 01952

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven.

An Act relative to limited line legal insurance products.

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

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

Chapter 176H1/2 INDEPENDENT PREPAID LEGAL SERVICES
COMPANIES; LICENSING STANDARDS.

Section 1. Definitions.

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

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

"Commissioner", the commissioner of insurance.

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

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

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

“Division”, the division of insurance.

"License", a written certificate issued by the commissioner of insurance, authorizing a person or entity to provide prepaid legal services in the commonwealth.

“Licensee”, an individual prepaid legal services plan sales representative or prepaid legal services plan company duly licensed by the commissioner of professional licensure.

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

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

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

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

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

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

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

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

Section 2. Exemptions.

For purposes of this chapter, independent prepaid legal services plan companies and their representatives, exclusively selling prepaid legal services plans as defined by this chapter, shall obtain a limited line insurance producers license pursuant to section 162M of chapter 175; except for section 162M of Chapter 175 as defined in this act, prepaid legal companies and their representatives exclusively selling prepaid legal services plans shall not be subject to the provisions of chapters 175, 175A and 176H of the General Laws. The provisions of this chapter shall apply to all companies and their representatives that are exclusively selling, soliciting or negotiating prepaid legal plan memberships as defined by this chapter to the citizens of the commonwealth.

Section 3. Prepaid legal services plan company registration.

No person or entity shall engage in the sale of prepaid legal services plan contracts with any individual residing within the boundaries of this commonwealth nor shall they advertise prepaid legal services within the boundaries of this commonwealth without first obtaining a license from the commissioner. The application for a license shall be in writing, shall be in a form prescribed by the commissioner and shall contain the name, residential address and the address where the business of the applicant is to be conducted, and if the applicant is a partnership, association, corporation or other form of business organization, the names and addresses of each member, commissioner and principal officer thereof, together with such further information as the commissioner may require including, but not limited to, a description of the nature of the business to be conducted, the proposed hours of operation on a daily basis and the area intended to be served. The application shall also contain the criminal history, if any, of each member, department, partner and principal officer, and a disclosure of any pending lawsuits, settled lawsuits, and judgments related to fraud of each member, department, partner and principal officer. The application must be accompanied by an application fee of five thousand dollars. The application must also be accompanied by a bond or letter of credit acceptable to the commissioner in the amount of fifty thousand dollars, which must remain in force so long as the prepaid legal services company does business in commonwealth. The amount of fee or bond or letter of credit may only be increased by regulation.

Section 4. Updated registration statements.

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

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

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

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

Section 6. Sales representative; product knowledge testing; grandfathering.

A prepaid legal services company shall administer a product knowledge test, approved by the division, to all of its representatives that will be directly involved in the selling, soliciting, and negotiating of prepaid legal services plans in the commonwealth. The test shall be based specifically on the respective company's plans being offered to the public and designed to ensure the company's sales representatives are knowledgeable about the products for which they will be selling. The company shall be responsible for developing and administering the examination and shall certify on a form prescribed by the division and filed with the division that said company has administered the examination in compliance with this chapter and section and that the representative has sufficient knowledge about the company's products and consumer protection laws regarding legal services plans. The company shall maintain records containing copies of exams and scores of product knowledge tests administered to prospective sales representatives for a period of three years after a sales representative's employment is terminated and shall provide individual or group test results upon the request of the division.

Duly licensed sales representatives directly involved in the selling, soliciting, and negotiating of prepaid legal services plans in the commonwealth prior to the enactment of this act shall be grandfathered into this act and shall comply with the renewal requirement as set out in section 5 of this act.

Section 7. Prepaid legal services contract requirements.

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

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

- (a) be written, printed, or typed in clear, understandable language that is easy to read;
- (b) include the name and full address of the company;
- (c) include the purchase price of the contract and the terms under which the contract is sold; and
- (d) include the terms and restrictions governing cancellation of the contract by the company or the legal services contract holder;

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

- (a) any administrator, if the administrator is not the company;
- (b) the name of the legal services contract holder;
- (c) include the amount of any deductible or copayment;
- (d) specify the legal services and other benefits to be provided under the contract, and any limitation, exception, or exclusion;
- (e) specify the legal services, if any, for which the company will provide reimbursement and the amount of that reimbursement;
- (f) specify any restriction governing the transferability of the contract or the assignment of benefits;
- (g) include the duties of the legal services contract holder;
- (h) include the contact information for the commissioner, including the commissioner's toll-free number and electronic mail address, as well as a statement that the commissioner regulates the company and the company's sales representatives;
- (i) explain the method to be used in resolving the legal services contract holder's complaints and grievances;
- (j) explain how legal services may be obtained under the legal services contract;
- (k) include a provision stating that no change in the contract is valid until the change has been approved by an executive officer of the company and unless the approval is endorsed or attached to the contract;

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

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

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

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

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

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

Section 8. Provider attorney requirements.

A provider attorney must:

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

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

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

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

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

Section 10. Company records.

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

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

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

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

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

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

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

Section 11. Terminating a prepaid legal services contract.

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

Section 12. Voiding a prepaid legal services contract.

If a legal services contract holder terminates a legal services contract in accordance with section 12 of this chapter and the holder has not sought legal services under the contract before the contract is terminated, the contract is void. A legal services contract holder may void the legal services contract at a later time as provided by the contract. If a legal services contract is voided, the company shall refund to the legal services contract holder or credit to the account of the legal services contract holder the full purchase price of the contract. If the company does not pay the refund or credit the legal services contract holder's account before the 60th day after the date the contract is voided, the company is liable to the legal services contract holder for a penalty each month an amount remains outstanding. The monthly penalty may not exceed 10 percent of the amount outstanding. The right to void a legal services contract is not transferable.

Section 13. Canceling a prepaid legal services contract.

A company may cancel a legal services contract by mailing a written notice of cancellation to the legal services contract holder at the legal services contract holder's last known address according to the records of the company. The company must mail the

notice before the fifth day preceding the effective date of the cancellation. The notice must state the effective date of the cancellation and the reason for the cancellation. The company is not required to provide prior notice of cancellation if the legal services contract is canceled because of:

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

Section 14. Complaints.

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

SECTION 2. The commissioner shall approve a legal services product knowledge test to be developed by respective prepaid legal plan companies to be administered to their prospective prepaid legal services plan representatives, as required by section 6 not later than 90 days after the effective date of this act.