

2016

Regulation

Reporter



**AMERICAN PREPAID LEGAL SERVICES INSTITUTE
AN ACT TO REGULATE THE BUSINESS OF PREPAID LEGAL SERVICE PLANS**

INTRODUCTION

Currently over 13 million people are covered by some type of prepaid legal service plan. Although the number of people covered has grown during the last fifteen years, the organizations developing and administering the prepaid legal plans have found it difficult to comply with the regulation of these organizations. Today these organizations may be regulated by the insurance department in one state, the bar association in another state, the attorney general's office in another state, and may be entirely unregulated in another state. It is obvious that the time for fair and adequate system of regulation has come.

Due to recent expansion of the industry in terms of both the number of covered persons and the types of service offered, it has become evident that, in the public's interest, all commercial prepaid legal service organizations should be regulated. At the same time, the regulatory mechanism cannot be so burdensome as to defeat one of the main goals of prepaid legal services: to make legal services available at an affordable cost.

In an effort to balance the need for consumer protection and the need for free development of legal service delivery mechanisms, the American Prepaid Legal Services Institute has developed this model act which proposes a comprehensive regulatory scheme for those entities which offer prepaid legal service plans. The provisions of the Act are designed to tailor the kind and amount of regulation to the financial risk undertaken by the entity which operates the plan.

The API model act does not propose to regulate licensed commercial insurance carriers. It is believed that it would be more efficient to amend the general insurance code to allow both life and casualty insurance companies to sell legal expense insurance as a separate line of insurance. Insurance companies would not be prohibited from establishing separate legal service organizations, which would be regulated under this Act.

Under the Act, the choice of who will act as the regulator is left to the individual state. It appears that the insurance commissioner would be the most appropriate choice, but there is no reason to limit the choice.

Lastly the API model act modifies the traditional insurance approach to financial responsibility. Because the level of risk is rather insubstantial, due to the prepaid nature of the product, the financial thresholds are considerably lower than those of traditional insurance products and instead relate to the varying types of benefit packages.

**AMERICAN PREPAID LEGAL SERVICES INSTITUTE
AN ACT TO REGULATE THE BUSINESS OF PREPAID LEGAL SERVICE PLANS**

- Section 1. [Short Title]
- Section 2. [Purpose(s)]
- Section 3. [Definitions]
- Section 4. [Legal Expense Insurance]
- Section 5. [Exemptions]
- Section 6. [Establishment of a Legal Service Organization]
- Section 7. [Certificate of Authority]
- Section 8. [Required Deposit or Bond]
- Section 9. [Affiliated Provider Service Guarantee]
- Section 10. [Contract Forms]
- Section 11. [Annual Report]
- Section 12. [Complaint System]
- Section 13. [Prohibited Practices]
- Section 14. [Regulation of Sales Agents]
- Section 15. [Examinations]
- Section 16. [Administrative Findings and Sanctions]
- Section 17. [Fees]
- Section 18. [Statutory Construction and Relationship to Other Laws]
- Section 19. [Implementing Regulations]
- Section 20. [Practice of Law Prohibited]

TEXT OF MODEL ACT

Section 1. [Short Title]

This Act may be cited as the Legal Service Organization Act of 20[].

Section 2. [Purpose(s)]

This Act is intended:

- (a) To encourage the development of effective and economical methods of making legal services available to the public and easing the burden of necessary legal expenses, and
- (b) To provide an effective and flexible regulatory framework for legal services plans that will encourage competition, experimentation and innovation while protecting the public.

Section 3. [Definitions]

(A) "Legal Service Organization" or "LSO" means any person or any group of persons authorized by this statute to provide or offer a legal service plan or plans.

(B) "Legal Service Plan" or "Plan" means a contract between a member or group of members and a person whereby the person undertakes to provide, arrange for, or pay the cost of, basic or comprehensive legal service benefits in exchange for a fixed sum or per capita payment.

(C) "Legal Service" means any service normally provided by or at the direction of an attorney, as well as the payment of related expenses and court costs; but not including the payment of fines, penalties, judgments, or assessments.

(D) "Member" means an individual, or the spouse or dependent of that individual, entitled to receive legal services under a legal service plan.

(E) "Affiliated Provider" means any attorney licensed to practice law having a written contract with a legal service organization to provide certain legal services to members or a legal service plan:

- (1) in exchange for payment; or
- (2) in consideration of the referral of members requiring legal services.

(F) "Basic Legal Service Benefits" means a plan providing or paying for legal services that are informational, non-complex, routine or otherwise capable of being provided without the necessity of subsequent lengthy involvement by an affiliated provider, such as:

- (1) Legal advice and information, including consultations and document review;
- (2) Representation of a plan member, through contact by telephone or letter with an adverse party; or
- (3) Preparation of non-complex legal documents such as simple wills or powers of attorney.

(G) "Comprehensive Legal Service Benefits" means a plan providing or paying for legal services that are more extensive, complex or time-consuming, such as:

- (1) Complex document preparation, extended negotiations, real estate transactions and other similar legal services; or
- (2) Representation in administrative, civil or criminal judicial proceedings such as divorce proceedings, child custody hearings, and traffic court.

(H) "Person" means any person, partnership, corporation, or trust fund.

(I) "Plan Sponsor" means an organization whose membership, participants, cardholders, subscribers, or employees are eligible to become members of a legal service plan.

Comments

Section 3. (B) The bill is designed to regulate non-insurance legal service plans. Because of this limitation, the regulatory mechanism can be more flexible and less burdensome than traditional insurance regulation.

Section 3. (F) The definition of basic legal benefits reflects what is currently considered an "access" plan. It is designed to allow for growth and change within the prepaid industry, but is limited to preventive, non-complex and routine legal services.

Section 3. (G) Comprehensive legal benefits includes plans which cover most of the average person's legal needs, especially those which involve court representation or more extensive legal services. Both the comprehensive and basic legal service definitions would regulate business legal service plans under this act.

Section 4. [Legal Expense Insurance]

(A) Any arrangement whereby an organization provides comprehensive legal service benefits and where more than 25% of the cost to the legal service organization of legal services provided under the arrangement is:

(1) Reimbursed directly to the member; or

(2) Paid to an attorney, who is not an affiliated provider;

will constitute a legal expense insurance arrangement and such organization must receive a certificate of authority from the commissioner of insurance to offer legal expense insurance in this state; and

(B) Nothing in this Act shall be construed to require a legal services organization to meet the requirements of an insurer under the insurance law.

Comments

Section 4. The Act is designed to regulate non-insurance legal service plans. It is expected that the insurance code would be amended to allow both life and casualty insurance companies to offer legal expense insurance.

Section 5. [Exemptions]

This Act does not apply to:

(A) Insurers licensed or authorized to offer legal expense insurance in this state or to any nonadmitted insurers.

(B) Retainer contracts and contingent fee contracts made by an attorney-at-law with individual clients with fees based upon an estimate of the nature and amount of services to be provided to a specific client and similar contracts made with a group of clients involved in the same or closely related legal matters.

(C) Not-for-profit bar association sponsored or approved lawyer referral services.

(D) Employee welfare benefit plans as defined in the Employee Retirement Income Security Act of 1974 to the extent that Section 514 of the Act preempts the regulation of such plans under state law.

(E) Legal service plans formed for the benefit of members of a bona fide membership organization, provided that such organization:

- (1) Is a nonprofit organization, exempt from taxation under a section of the Internal Revenue Code other than under Section 501 (c)(20);
- (2) Has as its primary purpose some purpose other than the provision of legal services;
- (3) Contracts directly with attorneys or law firms for legal services to be provided under its plan; and
- (4) Perform all marketing and administration of the plan at its own expense.

Comments

Section 5. (A) As commercial insurers are already regulated by the insurance department, it did not seem necessary to have these entities regulated again under this Act. A commercial insurer is offered the opportunity to establish a separate organization, which could be regulated under this Act.

Section 5. (B) This exclusion is designed to allow attorneys and clients to continue to make retainer contracts, without the fear of regulation from the insurance department.

Section 5. (C) As these entities do not pay for, or provide legal services, it seems unnecessary to regulate these lawyer referral services under this Act.

Section 5. (D) ERISA creates a regulatory framework for legal plans established in the context of the employment relationship. To the extent that ERISA preempts state law, this section recognizes that preemption.

Section 5. (E) Certain nonprofit membership organizations have long viewed legal plans as an extension of the membership services they provide their members. Where a plan sponsor is a bona fide nonprofit organization, which directly controls the marketing and legal service arrangements made on its members' behalf, there is little likelihood of fraud or risk of financial collapse.

Section 6. [Establishment of Legal Service Organization]

(A) Notwithstanding any law of this state to the contrary:

- (1) Any person may apply to the commissioner for a certificate of authority to operate a legal services plan.
- (2) Legal services plans may be offered on an individual or group basis, and along with or combined with other insurance and/or non-insurance products or services.

(B) Except as provided in Section 5 or Subsection (D) of this Section:

- (1) No person shall establish or operate a legal services plan in this state without a certificate of authority from the commissioner.
- (2) No person shall sell or offer to sell a legal service plan which has not received a certificate of authority.

(C) Subsection (B) of this Section shall not apply to any person providing or offering a legal service plan if fewer than 25% of the members in that plan reside in this state and the person is regulated to a comparable extent by another state in which a larger number of members reside, is domiciled, or has its principle place of business. Persons exempted by this subsection must

notify the regulator of their presence in the state and are subject to Section 13 and Section 14 of this act.

(D) Every legal service plan as of the effective date of this Act shall submit an application for a certificate of authority under Subsection (E) within 90 days of the effective date of this Act. Each such applicant may continue to operate until the [Regulator] acts upon the application. In the event an application is denied under Section 7, the applicant shall henceforth be treated as a legal services organization whose certificate of authority has been revoked.

(E) Applications for a certificate of authority shall include:

- (1) The basic organizational documents of the applicant;
- (2) The names, addresses and positions of the officers, directors, owners, partners and trustees of the applicant;
- (3) All agreements by the applicant with the individuals and organizations listed under number 2, above;
- (4) A general description of the applicant, its legal services plan and its plans for conducting the business;
- (5) All agreements relating to the legal services plan, including agreements with affiliated providers;
- (6) All forms and agreements proposed to be given to subscribers;
- (7) A statement of the financial condition of the applicant, including an income statement and balance sheet;
- (8) A description of the proposed membership payments with supporting data;
- (9) A statement showing that the plan will have an adequate number of affiliated providers under contract to carry out its plans; and
- (10) Any other information reasonably required by the Commissioner.

(F) All information supplied by the Applicant under Subsections (E) (5), (7), (8), and (9) shall be considered confidential and shall remain in the exclusive possession of the [Regulator].

Comments

Section 6. (A) The Act requires each plan to obtain a certificate of authority. The level or actuarial risk determines which certificate the plan will receive.

Section 6. (C) This exception is to avoid duplication and inconsistency with other states' laws where the state's interest is limited.

Section 6. (D) This Act does not contain a grandfathering provision. Every plan will be given sufficient time to submit an application for a certificate of authority. The plan is allowed to operate during the application and approval process.

Section 6. (E) This application is designed to give the regulator information to evaluate the legal service organization as well as to protect the consumer. Some of the information will not be available, particularly the actuarial data, in the first year of operation and the regulator should make exceptions in those circumstances.

Section 7. [Certificate of Authority]

(A) The [Regulator] shall, except as provided in subsection (B), issue to any person filing an application, within 90 days the filing, a Class A or Class B certificate of authority as follows:

- (1) A Class A certificate of authority shall be issued to legal service organizations offering only plans providing basic legal service benefits.
- (2) A Class B certificate of authority shall be issued to legal service organizations offering plans providing comprehensive legal service benefits.

(B) The [Regulator] may refuse to issue a certificate of authority, within 90 days, if the [Regulator] notifies the applicant during that time that the application is not complete or sufficient and states the reasons therefore, that payment of the fees required by Section 17 has not been made or that he/she is not satisfied that:

- (1) The basic organizational documents of the applicant permit the applicant to conduct business as a legal services organization.
- (2) The legal service organization has demonstrated the ability to provide the services in a manner which ensures their availability and accessibility.
- (3) The legal service organization is financially responsible and may be reasonably expected to meet its obligations to its members. In making this determination the [Regulator] shall consider:
 - (a) Agreements, if any, with an insurer or any other organization paying, contracting to pay for, or in any way guaranteeing the provision of legal services under the plan;
 - (b) All agreements with the affiliated providers guaranteeing the furnishing of legal services under the plan;
 - (c) The adequacy of working capital;
 - (d) Any surety bond or deposit of cash or securities as a guarantee that plan services will be duly performed; and
 - (e) The scope of the legal services benefits offered under the legal services plan.

Comments

Section 7. (B)(3) This information regarding the legal service organization and the plan enable the regulator to determine if the legal service organization will be able to provide the services promised.

Section 8. [Required Deposit or Bond]

(A) To assure the faithful performance of its obligations in the event of insolvency, each legal service organization, prior to the issuance of its certificate of authority, shall deposit and maintain with the [Regulator] securities of the type eligible for deposit by an insurer under [Cite Insurance Code section]. Such securities shall be held in trust and shall have at all times a market value in the amount specified. Whenever the market value of such securities is less than 95% of the amount of the deposit required, the legal service organization shall deposit additional securities or otherwise increase the deposit to the amount required.

- (1) The initial deposit for a legal service organization for at least the first full year of operation shall be in the amount of:
 - (a) For a Class A certificate of authority, \$5,000
 - (b) For a Class B certificate of authority, \$25,000
- (2) The amount of the initial deposit shall be adjusted annually thereafter on October 1 based

upon gross collected payments within the state, since the last adjustment, as follows:

<u>Type of Certificate</u>	<u>Gross Payments Revenue</u>			
	Less than \$150,000	150,000 But less than \$300,000	\$300,000 But less than \$1,000,000	\$1,000,000 Or more
Class A	\$ 5,000	\$10,000	\$20,000	\$ 50,000
Class B	\$25,000	\$25,000	\$75,000	\$125,000

(3) In lieu of any deposit of securities required under subsection (A) and subject to the approval of the [Regulator], a legal service organization may file with the [Regulator] a surety bond issued by an authorized surety insurer. The bond shall be for the same purpose as the deposit in lieu of which it is filed. No such bond shall be cancelled or subject to cancellation unless at least 30 days advance notice thereof, in writing, is filed with the [Regulator]. The [Regulator] may not approve any bond under the terms of which the protection afforded against insolvency is not equivalent to the protection afforded by those securities provided for in Subsection (A).

(4) Securities or bonds deposited pursuant to this Section shall be for the benefit of, and subject to, action thereon in the event of insolvency of the legal service organization by any person sustaining an actionable injury due to failure of the organization to faithfully perform its obligations to enrollees.

(5) The state shall be responsible for the safekeeping of all securities deposited with the [Regulator] under this Section. Such securities are not, on account of being in this state, subject to taxation.

(6) The deposit or bond shall be maintained unimpaired as long as the legal service organization continues to do business in this state, subject to the provisions of Section 6 (2). Whenever the organization ceases to do business or reduces its level of activity in this state as defined in Section 6 and furnishes to the [Regulator] proof satisfactory to the [Regulator] that the organization has provided for all of its obligations to its enrollees and/or affiliated providers in this state, the [Regulator] shall release the deposited securities to the parties entitled thereto upon presentation of the [Regulator's] receipts for such securities, or shall release any bond filed with it in lieu of such deposit.

(7) The [Regulator] may reduce the minimum market value of securities required under Subsection (1)(a) or the amount of the surety bond required under Subsection (3) of this Section if he or she finds that the reduction is justified by:

- (a) The terms and number of existing contracts with enrollees;
- (b) Financial guarantees of financially sound public or private organizations or agencies;
- (c) Agreements with affiliated providers for the furnishing of legal services;
- (d) Agreements with other persons for insuring the payment of the cost of legal services or the provision of alternative coverage in the event the legal service organization is unable to perform its obligations; or
- (e) Other reliable financial guarantees.

(8) The [Regulator] may at any time enter an order modifying the amount of the deposit or bond specified under Subsections (1) or (3) if it finds that there has been a substantial change in the facts upon which the original determination was based.

(9) No judgment creditor or other claimant of a legal service organization shall have the right

to levy upon any of the assets or securities held in this state as a deposit.

Comments

Section 8. The purpose of the deposit or bond is to provide consumer protection. The amount of deposit or bond should correlate to the amount of service or risk, i.e., the bond increases as the services increase. The amount of the bond or security does not need to be as great as that of a traditional insurance product because the risk is less than that of casualty or health insurance.

Section 9. [Affiliated Provider Guarantee]

(A) Any contracts between an affiliated provider and an legal service organization must include a guarantee that the attorney will provide the services to plan members whether or not the attorney has been or will be paid under the plan. Contracts shall require affiliated providers to give members the full benefit of plan membership until the member leaves the plan, or the anniversary date of the member's joining the plan, whichever comes first.

(B) Subsection (A) of this Section shall not apply if the legal service organization deposits and maintains with the [Regulator] securities or bonds in the amount of 10% of the gross collected payments received during the last fiscal year of the plan.

Comments

Section 9. This section is designed to provide additional consumer protection. The legal service organization has the option of requiring affiliated providers to guarantee services to the members or the legal service organization forgo the service guarantee by providing additional securities to the regulator.

Section 10. [Contract Forms]

(A) Materials soliciting plan members shall include a clear statement of the amount and terms of payment the member is agreeing to.

(B) Plan documents issued to members by the LSO purporting to describe the legal service plan shall contain:

- (1) A description of the legal services to which a member is entitled;
- (2) A description of the exclusions and limitations on services to be provided including any deductible or co-payment features and all restrictions relating to pre-existing conditions; and
- (3) Any criteria by which a member may be terminated or denied re-enrollment.

(C) All contracts between a legal service organization authorized to do business under this Act and any affiliated provider shall contain provisions which prohibit the affiliated provider from seeking payment from the member other than copayments and deductibles to the affiliated provider in the event of nonpayment by the legal service organization for any services which have been performed under contracts between the affiliated provider and the legal service organization.

(D) Contracts between the LSO and members shall be filed with the [Regulator] within 30 days of the use of any such contracts.

Comments

Section 10. (A) The Act lists what items must be in each member contract. Organizations are allowed to provide more information to the member, but these items are necessary to allow the consumer to make an informed decision about joining a prepaid legal plan.

Section 10. (C) This provision protects the member from having to pay the affiliated provider for services, if the organization becomes insolvent or otherwise unable to fulfill its obligations.

Section 11. [Annual Report]

(A) All legal service organizations subject to this Act, which offer either basic or comprehensive legal service plans, shall annually, on or before [___], file a report with the [Regulator], verified by an appropriate official of the organization.

(B) The report shall include:

- (1) A financial statement of the organization, including its balance sheet and statement of income and expenditures for the preceding year certified by an independent public accountant;
- (2) Information about the number and geographic distribution of the affiliated providers in relation to the plan's enrollees; and
- (3) Any changes in the information submitted initially upon application for a certificate of authority under Section 7.

(C) All information supplied under subsection (B) shall be considered confidential and remain in the exclusive possession of the [Regulator].

Section 12. [Complaint System]

(A) Every legal service plan shall include a complaint system, administered by the legal service organization or Plan Sponsor, to provide reasonable procedures for the resolution of complaints initiated by members concerning denial or limitation of services to which the member believes he or she is entitled or the conduct of an affiliated provider.

(B) The legal service organization shall maintain a record of written complaints made against it or its affiliated providers for a period of three years, and shall make such records available for inspection by the [Regulator].

Comments

Section 12. This provision protects the consumer by ensuring that plans have a dispute resolution mechanism.

Section 13. [Prohibited Practices]

(A) No legal service organization, or representative thereof, may cause or knowingly permit the use of marketing materials or plan documents which are false, fraudulent, misleading or deceptive.

(B) Section [cite state laws affecting unfair trade practices] shall be construed to apply to legal service organizations, legal service plans and their marketing materials and plan documents except to the extent that the [Regulator] determines that the nature of legal services organizations, legal service plans and evidence of coverage render such sections clearly inappropriate.

(C) A member's coverage may not be cancelled by the legal service organization except for failure to pay for such coverage, misrepresentation in the application for that coverage, abuse of plan rules, or such other reasons as may be approved by the [Regulator]. A member's coverage, however, may be terminated or its renewal refused by the organization effective at the end of any annual anniversary for any reason applied in a nondiscriminatory manner.

(D) No legal service organization may use in its name, contracts or literature any of the words "insurance," "casualty," "surety," "mutual," or any other words descriptive of the insurance, casualty, or surety business or similar to the name or description of any insurance or surety corporation doing business in this state.

Section 14. [Regulation of Sales Agents]

(A) Every legal service organization authorized to do business in this state shall register each individual who receives compensation for soliciting enrollments on its behalf by listing such individuals on a form provided by the [Regulator]. On January 1 and July 1 of each year, the legal service organization shall advise the [Regulator] of additions to or deletions from this list since the last reporting date.

(B) Every legal service organization shall be responsible for the proper training and supervision of its sales agents and shall be liable for any violation by the sales agent of any provision of this Act.

Comments

Section 14. The requirement that agents register is to ensure that the consumers of legal service plans are protected. Only through registration can the state track down agents who misrepresent the product.

Section 15. [Examinations]

(A) The [Regulator] shall make an examination of the operations of any legal service organization holding a Class B certificate of authority under this Act. Such examination shall include, but not be limited to, all contracts, agreements and arrangements for the operation of the

legal service plan or plans and shall be made not more than every three years.

(B) The [Regulator] shall make an examination of the operation of any legal service organization holding a Class A certificate of authority. The [Regulator] may conduct such examinations not more often than once every five years.

(C) Every legal service organization shall make its books and records relating to its operations available to the [Regulator] to facilitate the examination.

(D) No examination of the [Regulator] may be undertaken which would in anyway violate the attorney-client privilege except with the express written consent of the member.

(E) For the purpose of examination the [Regulator] may issue subpoenas, administer oaths to, and examine the officers and agents of the legal service organization.

Section 16. [Administrative Findings and Sanctions]

(A) The [Regulator], consistent with the provisions of [State Administrative Proceeding Act], may initiate proceedings to determine if a legal service organization has:

- (1) Operated in a manner which materially is not in conformance with its organizational documents;
- (2) Materially breached its obligations to furnish the legal services specified in its contracts with members;
- (3) Violated any provision of this Act, or any regulations promulgated hereunder;
- (4) Made any false statement with respect to any report or statement required by this Act or by the [Regulator] under this Act;
- (5) Advertised or marketed, or attempted to market, its services in a manner which misrepresents its services or its capacity to deliver services, or engaged in deceptive, misleading or unfair practices with respect to advertising or marketing; and
- (6) Attempted to prevent the [Regulator] from the performance of any duty imposed by this Act.

(B) After providing written notice and an opportunity for a hearing to be scheduled no sooner than 20 days following the notice, the [Regulator] shall make administrative findings and, as appropriate, may:

- (1) Impose a penalty of not more than \$5,000 for each and every unlawful act committed; and
- (2) Issue an administrative order requiring the legal services organization to:
 - (a) Cease or modify inappropriate conduct or practices by it or any of the personnel employed or associated with it;
 - (b) Fulfill its contractual obligations;
 - (c) Provide a service which has been improperly denied; or
 - (d) Take steps to provide or arrange for any services which it has agreed to make available.

(3) Suspend or revoke the certificate of authority of the legal service organization.

(C) If its certificate of authority is suspended, the organization, during the period of such suspension, shall not enroll any additional members and shall not engage in any advertising or solicitation whatsoever.

(D) If its certificate of authority is revoked, the organization shall proceed under the supervision of the [Regulator], immediately following the effective date of the revocation, to conclude its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of such affairs; provided that the [Regulator] may, by written order, permit further operation of the organization as he/she finds to be in the best interest of the members, to the end that the members will be afforded the greatest practical opportunity to obtain continued legal services coverage.

(E) The [Regulator] may apply to any court for the legal or equitable relief he/she deems necessary to effectively carry out the purposes of this Act.

Section 17. [Fees]

Every legal service organization subject to this Act shall pay to the [Regulator] the following fees:

(A) For filing a copy of its application for a certificate of authority or amendment thereto, [\$].

(B) For filing an annual report pursuant to Section 13,[\$].

(C) The expenses of any examinations conducted pursuant to Section 17.

Section 18. [Statutory Construction and Relationship to Other Laws]

(A) Except as otherwise provided in this Act, provisions of the general [insurance law] [citation] shall not be applicable to any legal service organization. This provision shall not apply to an insurer licensed and regulated pursuant to the insurance laws or the general laws of the state except with respect to its legal service organization activities authorized and regulated pursuant to this Act.

(B) Solicitation of members (whether by telephone, in writing, in person or otherwise) by a legal service organization, or its representatives, shall not be construed to violate any provisions of law relating to solicitation or advertising by attorneys but this should not be construed to mean that this preempts the attorney's duty to not solicit in violation of the attorney disciplinary rules.

Section 19. [Implementing Regulations]

The [Regulator], after notice of hearing, may promulgate reasonable rules and regulations necessary and proper to carry out the provisions of this Act. Nothing in this Act shall be construed to prohibit the [Regulator] from requiring changes in procedure previously approved by him/her.

Section 20. [Practice of Law Prohibited]

(A) A legal service organization shall not engage in the practice of law in any manner, nor shall the organization control or attempt to control any attorney in the exercise of his or her professional judgment.

(B) Any legal service organization authorized under this Act and operating under this Act shall not by that fact alone be deemed to be practicing law.

Section 21. [Severability]

If any section, term, or provision of this Act shall be adjudged invalid for any reason, such judgment shall not affect, impair or invalidate any other section, term, or provision of this Act but the remaining Sections, terms and provisions shall be and remain in full force and effect.

GLSA REGULATION REPORTER STATE LISTING

ALABAMA

INSURANCE DEPARTMENT CONTACTS

State of Alabama Department of Insurance
Insurance Commissioner: **Jim L. Ridling**
201 Monroe Street, Suite 1700
Montgomery, Alabama 36104

Phone: (334) 269-3550
Fax: (334) 241-4192
Internet: www.aldoi.gov

For further information contact:
Ann Strickland - (334)241-4154
Legal Service Insurance [instructions and forms](#)

STATE BAR CONTACTS

Alabama State Bar
Executive Director: **Keith B. Norman**
415 Dexter Avenue
Montgomery, Alabama 36101

Phone: (334) 269-1515
Fax: (334) 261-6310
Internet: www.alabar.org/

REGULATORY SUMMARY

Special Statute:

The Alabama Legal Expense Insurance Act ([Alabama Code, Chapter 27-43-1 ff.](#)) has been in effect since 1982.

Insurance Department Policy:

The Department may exempt access plans from requirements of the Legal Expense Insurance Act on a case-by-case basis.

Renewal of producer licenses is available online at www.aldoi.gov

LAWYER ETHICS RULES

Alabama has adopted lawyer professional conduct rules based on the ABA Model Rules of Professional Conduct.

The Disciplinary Commission is of the opinion that there is an inherent conflict of interest in a law firm selling pre-paid legal insurance and then providing the insured with the legal services required under the policy. Opinion 1999-04

Registration:

Provider agreements and proposed legal services contracts for prospective plan members must be filed with the Alabama State Bar. [Ala. Code ch 27-43-8 (b)].

GLSA REGULATION REPORTER STATE LISTING

ALABAMA

Selected Text Table

State Statutes, Regulations, Attorney General Opinions, Etc.

Alabama Code - [Article 27 Legal Expense Insurance](#)

[Alabama Dept. of Insurance Regulations](#) - Chapter 482-1-110 Annual Renewal of License and Continuing Education For Producers and Service Representatives
Click on the link above and scroll down to Regulation 110.

Chapter 482-1-147 Insurance Producer, Temporary Producer, and Service Representative Requirements Relating to Prelicensing Education, Examinations, Licensing, Appointments and Disciplinary Consequences
Click on the link above and scroll down to Regulation 147.

Chapter 482-1-157: Criminal History Background Checks for Insurance Producers and Independent Adjusters (eff. 1/1/15)

[Forms and Instructions](#)

Lawyer [Ethics Rules](#) and [Disciplinary Opinions](#)

Rules open as PDF

Rule of Professional Conduct [5.4](#) -- [Professional Independence of a Lawyer](#)

Rule of Professional Conduct [7.1](#) -- [Communication Concerning A Lawyer's Services](#)

Rule of Professional Conduct [7.2](#) -- [Advertising](#)

Rule of Professional Conduct [7.3](#) -- [Direct Contact with Prospective Clients](#)

Disciplinary Commission -- [Opinion Number 95-08](#) Local bar association referral service may utilize percentage fee program if income thereby generated is used to defray costs of program or to support other public service programs

Disciplinary Commission -- [Opinion Number 96-07](#) Alabama Rules of Professional conduct apply to lawyer advertising on the Internet and private on-line services

Disciplinary Commission -- [Opinion Number 99-01](#) Attorney may not pay for advertising of another attorney in exchange for referrals

Disciplinary Commission -- [Opinion Number 99-04](#) Impermissible conflict exists where law firm sells pre-paid legal insurance policies and also provides insureds with legal services required under the policies.

Disciplinary Commission -- [Opinion Number 03-01](#) Various Advertising Issues Addressed

Disciplinary Commission -- [Opinion Number 10-01](#) The Unbundling of Legal Services and "Ghostwriting"

Disciplinary Commission -- [Opinion Number 12-1](#) Advertising on Groupon and Similar Deal of the Day websites

GLSA REGULATION REPORTER STATE LISTING

ALASKA

INSURANCE DEPARTMENT CONTACTS

Department of Commerce, Community &
Economic Development - Division of Insurance

Director of Insurance: **Lori Wing-Heier**

State Office Building

333 Willoughby Avenue – 9th Floor

P.O. Box 110805

Juneau, Alaska 99811-0805

Phone: (907) 465-2515

Fax: (907) 465-3422

Internet: [Division of Insurance](#)

Anchorage Office:

550 W. 7th Ave. Suite 1560

Anchorage, AK 99501-3567

Phone: (907) 269-7900

Fax: (907) 269-7910

For further information contact:

Certificates of Authority: (907) 269-7906

Compliance: (907) 465-2584

Financial Statement Filing: (907) 465-4610

Consumer Services: (907) 269-7900

STATE BAR CONTACTS

Alaska Bar Association

Executive Director: **Deborah O'Regan**

550 W. 7th Ave. Suite 1900

Anchorage, Alaska 99501

Phone: (907) 272-7469

Fax: (907) 272-2932

Internet: www.alaskabar.org

INSURANCE DEPARTMENT POLICY

In the absence of a statute or published administrative rules, the Division of Insurance takes the position that prepaid legal services, except for access plans, can be sold in Alaska only as part of the casualty insurance system.

The Division of Insurance reviews filings to determine whether proposed rates and forms comply with state insurance regulations and are non-discriminatory.

Rates and forms are deemed approved after thirty days, unless the Division indicates differently.

Access plans do not constitute the business of insurance and, therefore, are not regulated by the Division of Insurance. The Division looks at plans on an individual basis to determine whether there are sufficient characteristics of an insurance product.

ATTORNEY GENERAL OPINION:

Opinion No. J-66-359-80 addresses the issue of whether a legal service plan that exhibits some characteristics of insurance is subject to regulation by the Division of Insurance. The opinion, prepared at the request of the Division, was issued on January 18, 1980.

The Attorney General's Office determined that the plan at issue did have an indemnity component, but that since its principal purpose was not the provision of insurance, it was not subject to regulation by the Division of Insurance.

However, the opinion notes that other regulations – e.g., code of professional responsibility – might impact the operation of legal service plans and the role that participating lawyers may play in such plans. The opinion was written prior to the adoption of ethics rules based on the Model Rules of Professional Conduct.

LAWYER ETHICS RULES:

Effective April 15, 2009, Alaska revised their [Rules of Professional Conduct](#) based on the ABA's Model Rules of Professional Conduct.

GLSA REGULATION REPORTER STATE LISTING ALASKA

Selected Text Table

State Statutes, Regulations, [Attorney General Opinions](#), Etc.

Attorney General Opinion -- [No. J-66-359-80](#)

Lawyer [Ethics Rules](#) and [Opinions](#)

Ethics Rules open as PDF of all rules.

Rule of Professional Conduct 1.18 -- Duties to Potential Client

Rule of Professional Conduct 5.4 -- Professional Independence of a Lawyer

Rule of Professional Conduct 7.1 -- Communication Concerning a Lawyer's Services

Rule of Professional Conduct 7.2 -- Advertising

Rule of Professional Conduct 7.3 -- Direct Contact with Prospective Clients

GLSA REGULATION REPORTER STATE LISTING ALASKA

Office of the Attorney General
State of Alaska

File No. J-66-359-80
January 18, 1980

You have requested this department's advice as to whether the legal service plan proposed by the X Corporation is subject to regulation by the Division of Insurance. 'Insurance' is defined in Title 21 as 'a contract whereby one undertakes to indemnify another or pay or provide a specified or determinable amount of benefit upon determinable contingencies.' As proposed, the X Corporation legal service plan does exhibit some characteristics of 'insurance' within this definition.

However, the technical definition of insurance should not control the issue of whether regulation under the insurance statutes is appropriate.¹ If the X legal service plan is not considered to constitute insurance, it will be regulated by both the Department of Commerce and Economic Development and the Alaska Bar Association. The issue here is not whether some aspects of the proposed plan may or may not be insurance, but whether the principal purpose of the plan is to provide insurance. The primary issue is whether the particular regulatory provisions of the insurance statutes would in this instance protect the purchasers of the legal service plan from the X Corporation as administrator of the plan. Particularly at issue in the instant case is whether the deposit requirements established by AS 21.09.090 should be imposed upon the X Corporation as a condition to allowing it to commence business in the state. These deposit requirements are designed to safeguard the subscriber's indemnification rights in the event of the insurer's insolvency.

The principal purpose test enunciated in the cited cases has been widely recognized. 44 C.J.S. Insurance § 59 reads:

Whether a company is engaged in the insurance business depends not on the name of the company, but on the character of the business that it transacts, and whether the assumption of a risk, or some other matter to which it is related, is the principal object and purpose of the business.

This approach was adopted by the second circuit court of appeals in *Jordan v. Group Health Ass'n*, 107 F.2d 239 (2nd Cir. 1939). In that case, the court of appeals considered whether a medical service organization was subject to regulation as an insurer. The organization was a nonprofit corporation which managed a group health plan. This nonprofit corporation was to use its best efforts to make available to members, upon payment of membership dues, the services of physicians. These services were contracted for by the group health organization. The main purpose of the business in the court's view was to 'contract for the rendition of the services by independent contractors, not to supply them at all events or contingently.' The court's holding that the group health plan was not insurance was premised on the adoption of the principal purpose test. The court emphasized that the plan was principally engaged in offering service, not in indemnifying against risks. The court stated:

That an incidental element of risk distribution or assumption may be present should not outweigh all other factors. If attention is focused only on that feature, the line between insurance or indemnity and other types of legal arrangement and economic function becomes faint, if not extinct. This is especially true when the contract is for the sale of goods or services on contingency. But obviously it was not the purpose of the insurance statutes to regulate all arrangements for assumption or distribution of risk. That view would cause them to engulf practically all contracts, particularly conditional sales and contingent service agreements. The fallacy is in looking only at the risk element, to the exclusion of all others present or their subordination to it. The question turns, not on whether risk is involved or assumed, but on whether that or something else to which it is related in the particular plan is its principal object and purpose.

The court further noted that the application of insurance statutes to the group health plan would result in the destruction of the organization, rather than in its regulation. In particular, the court found that the reserve requirement was uneconomic and inappropriate. It stated at 251:

Imposition of the requirements in such circumstances would be not only useless, but an economic waste. It is not the function or purpose of group health to pile up vast accumulations of capital to await the needs of a distant day; it is rather to keep a steady flow of funds, with as small a margin as possible, running from patient to

GLSA REGULATION REPORTER STATE LISTING

ALASKA

physician as nearly contemporaneously with the reverse flow of service from physician to patient can be. It is a distributing, not an accumulating agency.

The primary issue is therefore whether the X legal service plan can be properly classified as a contingent service plan. The proposed plan structurally parallels the group health plan discussed in the Jordan case. There is, however, one significant difference. In Jordan, the corporation was a nonprofit corporation controlled by the very parties to which the health service inured. Here, the X Corporation is a profit corporation and consequently does not evidence the same identity of interests.

The design of the program is fairly simple. The X Corporation administers and markets the plan. Subscribers desiring coverage pay a set fee to the X Corporation in exchange for the corporation's promise to procure certain legal services. X Corporation then deposits the money into a trust fund. X Corporation is paid designated amounts from the trust fund for providing administrative services. The rate and terms of compensation are controlled by the administration-trustor agreement.

In order to provide the agreed upon legal services, the X Corporation contracts with licensed attorneys to provide the services for a set fee. The attorneys agree to look primarily to the trust fund for payment, of which the terms and conditions are set by the attorney-trustor agreement. This agreement establishes that the attorney shall be paid ten dollars from each individual subscriber's fee (4.2 Attorney-Trustor Agreement). The contracting attorney is entitled to retain this fee regardless of what services are performed for each member. The fee must be returned only if the legal service is discontinued or the certificate of coverage is terminated. Section 3.11.2 also establishes that the ten-dollar fee will constitute the attorney's full and complete claim against the covered member and the trust fund. This provision indicates that if the trust fund refuses to pay or becomes insolvent that the contracting attorney may pursue a claim for ten dollars against an individual subscriber. The attorneys contracting with the X Corporation assume the status of independent contractors and are not employees of the X Corporation.

The provision that the independently contracting attorney may seek recourse against a covered individual distinguishes the X Corporation plan from the plan discussed in Jordan and related cases. The subscribing individual has prepaid X Corporation for certain legal services. Although the amount of service has not been established, the type of service is clearly delineated. The X Corporation has agreed to provide each subscriber with a simple will, unlimited telephone consultation and referral service at a set rate. However, if the subscriber takes advantage of these services, he may, under the provisions of the attorney-trustor agreement, be held liable up to \$10.00. The independently contracting attorney, has not, under the X Corporation plan, agreed to look exclusively to the X Corporation for payment; the subscriber still is secondarily liable. Therefore, the X Corporation has agreed to indemnify the subscriber for certain legal services and yet has not established a guarantee fund assuring that the subscriber will in fact be indemnified for the expenses related to these services. In this kind of situation, a reserve fund would serve to protect the insured from any potential liability.

In *People v. California Mutual Ass'n*, 441 P.2d 97 (Calif. 1968), the Supreme Court of California considered whether a health plan structured similarly to the X Corporation plan constituted insurance. In determining whether the plan constituted insurance, the court considered whether the plan contained 'significant aspects of indemnity.' Central to this inquiry, was the issue of whether the member incurred personal liability for services rendered or promised by the insurer and consequently whether a reserve fund would fulfill a regulatory goal. The court noted that the California Physicians' Service Plan, 167 A.L.R. 306, did not constitute insurance since the contracting physicians agreed to seek payment only from the service and therefore bore all the risk of the financial solvency of the service. Similarly, in Jordan, supra, at 243, the court emphasized that the contracts made with group health did not purport to obligate the member to pay the physician for the service. The court noted that the 'risk' element hinged on the physician, because of his set payment, rather than upon the group health plan. The court stated at 246:

The agreement is not to pay to the member or to any one else the amount of loss which is caused to him. True, the physician receives his salaried compensation. But he receives no more and no less because of the falling of the loss. He is not a beneficiary; nor is he an agent of the member; in an inaccurate, nontechnical sense, he, rather than Group Health, is the one more nearly analogous to an insurer.

The issue is therefore whether the imposition of the reserve fund requirement is warranted in this case by the possible imposition of a ten-dollar liability upon each subscribing individual. It is assumed under the X Corporation plan that the independently contracting attorney will bear the risk that the funds received will be adequate to cover the services offered,

GLSA REGULATION REPORTER STATE LISTING

ALASKA

during the time in which the plan is in operation. In the context of the instant plan, the independently contracting attorney is able to offer reduced rates by spreading the cost of the service between users and non-users. The attorney is assuming the risk that the number of non-users will be sufficiently large to make profitable the service rendered to the users. This is a fundamental element of insurance, but it is the attorney, and not the X Corporation, that is assuming this risk of 'use'.²

In *People v. California Mutual Ass'n*, supra, the California court confronted a similar question. In that case, the California Mutual Association (CMA), a nonprofit corporation, contracted with thirty-eight physicians to provide medical services to its members. However, CMA also had contracts with seven physicians who had not agreed to look exclusively to CMA for payment. Generally, CMA reimbursed members for the cost of treatment by these seven physicians. The court held that the direct contracts with the thirty-eight doctors were service contracts and did not constitute indemnification. However, the contracts with the seven other doctors who had agreed only to serve members, but had not agreed to seek payment solely from CMA, were held to constitute insurance.³ The court remanded the case, to determine whether the indemnity or insurance portion of CMA's business constituted a 'significant financial proportion' of the business. If the amount were found to be 'financially significant' the plan as an entirety would be considered insurance. The court stated at 101:

We realize that this determination involves balancing the indemnity aspects against the direct service aspects of the business, but only in the context of the plan as a whole can it be determined whether the indemnity feature is so significant as to warrant imposing the Insurance Code financial reserve requirements.

It should be noted that the legal service plan will also be extensively regulated by the Alaska Bar Association. Several aspects of the X Corporation legal service plan may not comport with existing bar regulations.

First, the subscription fee paid by the members should not be characterized as a 'retainer fee.' The X Corporation is not an attorney and may not accept a retainer fee. In the several agreements accompanying the plan, the subscription fee is labeled a 'contribution' for the purchase of 'group legal expense benefits.' The X Corporation is, however, legally prohibited from selling legal services. Furthermore, Section 2.16.2 of the attorney-trustor agreement states that 'contributions shall replace the words 'premiums' of [sic] 'fees.' Therefore, by attempting to eliminate possible insurance connotations, the plan may run afoul of the standards of professional conduct.

Secondly, DR 2-103(B) prohibits a lawyer from 'compensating or giving anything of value to a person or organization to recommend or secure his employment by a client . . .' Under the X Corporation plan, the legal service office is in one sense giving up part of the fee paid by the subscriber to X Corporation. The subscriber is paying the X Corporation \$28 for legal services. Out of that payment, the party providing the legal services receives only \$10. There is thus a question as to whether the independently contracting attorney is in fact paying the Don Caldwell Corporation for referrals. Recently, the District of Columbia Legal Ethics Committee addressed this question of 'Joint advertising' expenditures. The Legal Ethics Committee concluded that under the current code of professional responsibility, which is similar to Alaska's, joint referral programs which were not approved by a bar association (DR 2-103(D)(3)) violated the code. Several amendments have been proposed to allow for such joint referral programs in the District of Columbia. However, unless Alaska adopts similar amendments, the program may be prohibited from operating by DR 2-103.

Although these issues are not directly related to the question of whether the insurance statutes should apply, they do address the issue of what kind of regulation is appropriate. The Bar Association is primarily responsible for insuring that the legal services provided by the plan conform to professional standards. The Code of Professional Responsibility is one method by which the Bar is able to enforce these standards.

Avrum M. Gross
Attorney General

Leslie J. Ludtke
Assistant Attorney General

¹ In *Physicians' Defense Co. v. O'Brien*, 111 N.W. 396, 398 (1907), the dissent stated: 'The statutory definition of insurance is comprehensive, but it does not follow that all contracts which contain a technical element of indemnity are insurance contracts. The statute should be read in light of the development of insurance law, and the purpose of requiring insurance companies to become subject to the examination and control of the state.' See also, *State v. Anderson*, 408 P.2d 864, 875 (Kan. 1966).

GLSA REGULATION REPORTER STATE LISTING

ALASKA

² In *Guaranteed Warranty Corp., Inc. v. State, ex. rel. Humphrey*, 533 P.2d 87, 90 (Ariz. 1975), the court listed five elements of insurance: (1) an insurable interest; (2) a risk of loss; (3) an assumption of the risk by the insurer; (4) a general scheme to distribute the loss among the larger group of persons bearing similar risks; and (5) the payment of a premium for the assumption of risk.

³ It is not clear from the case report whether these doctors agreed to look primarily to CMA for payment. The Don Caldwell plan may be distinguishable on the grounds that the independently contracting attorneys have agreed to look primarily to the trust fund for payment. Additionally, it is questionable whether those lawyers may legally assert a claim against the subscribing members. The subscribing members are third-party beneficiaries of the contract between the contracting attorneys and the Don Caldwell Corporation, and as such it is difficult to ascertain the legal basis on which liability to the independently contracting attorney may rest. These considerations undermine the indemnity aspect of the Don Caldwell plan.

GLSA REGULATION REPORTER STATE LISTING

ARIZONA

INSURANCE DEPARTMENT CONTACTS

Arizona Department of Insurance
Director of Insurance: **Andy Tobin**
2910 N. 44th Street, Suite #210
Phoenix, Arizona 85018

Phone: (602) 912-8400
Fax: (602) 912-8453
Internet: www.id.state.az.us/

Tucson Office:
400 West Congress, Suite #152
Tucson, Arizona 85701

For information contact:
Insurance Questions:
Phoenix Area: (602) 364-2499
Tucson Area: (520) 628-6370
Statewide: (800) 325-2548

State forms can be downloaded at:
<https://insurance.az.gov/insurers/financial-reporting-foreignalien-entities/prepaid-legal-insurer>

STATE BAR CONTACTS

State Bar of Arizona
Executive Director: **John F. Phelps**
4201 N. 24th Street, Suite 200
Phoenix, Arizona 85016-6288

Phone: (602) 252-4804
Fax: (602) 271-4930
Internet: www.azbar.org/

INSURANCE DEPARTMENT POLICY

Special Statute:

Prepaid legal services are addressed by [Title 20, Chapter 4, Article 13](#) of the Arizona Revised Statutes. A *Prepaid Legal Insurance Contract* is defined as “a contractual obligation to indemnify for specific legal services rendered in the normal and ordinary course of business by an active member of the state bar of Arizona.” Such contracts, whether individual or group, must be filed with and approved by the Department of Insurance prior to issuance.

Persons seeking to write contracts providing legal expense insurance must first obtain a certificate of authority from the Director of Insurance. Filing requirements for such a certificate are set out in [§20-1097.02\(B\)](#).

The statute requires licensees to file annual statements with the Director of Insurance.

The Director of Insurance is authorized to require that advertising and sales materials be approved by the Department. Limited benefit plans are required to comply with the statute to operate in the state.

In 2003, the Arizona legislature revised the insurance statutes to clarify that captive insurers are prohibited from writing prepaid legal insurance. [See, A.R.S § 20-1098.01 \(B\)\(1\)\(d\)](#)

LAWYER ETHICS RULES

The Arizona Supreme Court's Unauthorized Practice of Law Rules provides for regulation of Certified Document Preparers. <http://www.azcourts.gov/cld/LegalDocumentPreparers.aspx>

GLSA REGULATION REPORTER STATE LISTING

ARIZONA

Selected Text table

State Statutes, Regulations, Attorney General Opinions, Etc.

Arizona Revised Statutes [Title 20, Chapter 4, Article 13: Prepaid Legal Insurance](#)

Click the link and then 'next document' to see the complete article.

Lawyer [Ethics Rules](#) and [Opinions](#)

Rule of Professional Conduct [1.18 -- Duties to Prospective Client](#)

Related Opinions - none

Rule of Professional Conduct [5.4 -- Professional Independence of a Lawyer](#)

[Related Opinions](#)

Rule of Professional Conduct [7.1 -- Communications and Advertising Concerning a Lawyer's Services](#)

[Related Opinions](#)

Rule of Professional Conduct [7.2 -- Advertising](#)

[Related Opinions](#)

Rule of Professional Conduct [7.3 -- Direct Contact with Prospective Clients](#)

[Related Opinions](#)

GLSA REGULATION REPORTER STATE LISTING ARKANSAS

INSURANCE DEPARTMENT CONTACTS

Arkansas Insurance Department
Commissioner: **Allen Kerr**
1200 West Third Street
Little Rock, AR 72201

Phone: (501) 371-2600
(800) 282-9134

Fax: (501) 371-2618

Internet: www.insurance.arkansas.gov

For further information contact:

Finance: (501) 371-2665
Legal: (501) 371-2820
License: (501) 371-2750
Life & Health: (501) 371-2800
Property & Casualty: (501) 371-2800

STATE BAR CONTACTS

Arkansas Bar Association
Executive Director: **Karen K. Hutchins**
2224 Cottondale Lane
Little Rock, AR 72202

Phone: (501) 375-4606
(800) 609-5668

Fax: (501) 375-4901

Internet: www.arkbar.com/

REGULATORY SUMMARY

Special Statute:

The Arkansas Legal Insurance Act (Arkansas [Code Sections 23-91-201 et seq.](#)) adopts a traditional insurance approach to the regulation of prepaid legal services.

All entities transacting the business of prepaid legal services are regulated under the provisions of this law.

The following are not considered "insurance" and are exempt from the Act's jurisdiction: reimbursement for legal services incidental to other insurance coverages; retainer contracts;

consultation or advice in connection with, or a part of referral services; limited legal services provided on an informal basis in the context of an employment or educational or similar relationship; legal services provided by unions or employee associations to members in matters relating to employment or occupation; and legal services provided by an agency of state or federal government to its employees.

Annual reporting on or before March 1.

Other Statutes:

Arkansas Code Section 16-22-101 makes it unlawful for any person or organization to operate a lawyer referral service without the prior approval of the state supreme court. A lawyer referral service is defined as "referring clients to attorneys and receiving compensation for the referral." The statute gives the courts jurisdiction to issue cease and desist orders against violators.

Unlike laws passed in other states regulating lawyer referral services, the Arkansas law does not exempt prepaid legal services plans from its requirements. In the absence of further guidance from the Arkansas Supreme Court or legislature, operators of plans with referral features are advised to apply for approval under the statute.

INSURANCE DEPARTMENT POLICY

Whether an access plan is considered "insurance," thus subject to regulation by the Department under the Legal Insurance Act, is reviewed on a case-by-case basis. The Department rescinded its regulations regarding pre-licensing education requirements for Legal Insurance Agents in 1997.

LAWYER ETHICS RULES

Arkansas adopted rules patterned after the ABA Model Rules of Professional Conduct.

GLSA REGULATION REPORTER STATE LISTING ARKANSAS

Selected Text Table

State Statutes, Regulations, Attorney General Opinions, Etc.

[Arkansas Legal Insurance Act -- § 23-91-201 - §23-91-227](#)

[Arkansas Code §16-22-101 -- Lawyer Referral Services](#)

Click ok to open files, on left click on Title 16, subtitle 2, chapter 22, subchapter 1, section 16-22-101

Lawyer Ethics Rules and [Opinions](#)

Rule of Professional Conduct [1.18](#) -- [Duties to Prospective Client](#)

Rule of Professional Conduct [5.4](#) -- [Professional Independence of a Lawyer](#)

Rule of Professional Conduct [7.1](#) -- [Communications Concerning a Lawyer's Services](#)

Rule of Professional Conduct [7.2](#) -- [Advertising](#)

Rule of Professional Conduct [7.3](#) -- [Direct Contact with Prospective Clients](#)

[Opinion 95-01](#) Sharing Fees with Lawyer Referral Service

[Opinion 2003-03](#) Advertising and Referrals to Out of State Attorneys

GLSA REGULATION REPORTER STATE LISTING CALIFORNIA

INSURANCE DEPARTMENT CONTACTS

California Department of Insurance
Commissioner: **Dave Jones**
300 Capitol Mall, 13th Floor
Sacramento, California 95814

Phone: (800) 927-4357 (within California)
(213) 897-8921
Internet: www.insurance.ca.gov/

For Further Information Contact:
Producer License Bureau: (916) 322-3555

Los Angeles Office:
Phone: (213) 346-6006

STATE BAR CONTACTS

State Bar of California
Executive Director: **Elizabeth Rindskopf Parker**
180 Howard Street
San Francisco, California 94105-1639
Phone: (415) 538-2000
Internet: www.calbar.ca.gov

Los Angeles Office:
Phone: (213) 765-1000

Sacramento Office:
Phone: (916) 442-8018 (Legislative Office)

The State Bar's Committee on [Delivery of Legal Services](#) deals with the provision of legal services to moderate income households, including the use of prepaid legal plans.

REGULATORY SUMMARY

Special Statutes:

Legal insurance is defined in [Section 119.6](#) of the California Insurance Code. Both life and casualty insurers are permitted to write legal insurance under this section.

California Insurance [Code §§12125 – 12129](#) detail various requirements for transacting legal insurance in the state.

Other Statutes:

Section 10830 of the California Corporations Code permits the formation of nonprofit corporations for the purpose of defraying the costs of professional services of lawyers. These corporations must provide all members of the State Bar an opportunity to render legal services. Corporations must also obtain a certificate of compliance from the State Bar.

Business and Professions Code Section 6155 provides for the registration of lawyer referral services with the State Bar. Under the statute, lawyer referral services do not include plans of legal insurance — as defined by §119.6 of the Insurance Code — and group or prepaid legal plans which recommend, furnish or pay for legal services to members and provide telephone advice or personal consultation (§6155(c)(1) and (2)).

LAWYER ETHICS RULES

The California Supreme Court adopted ethics rules in 1989 which do not follow the format found in either the ABA Model Rules of Professional Conduct or the Model Code of Professional Responsibility. Instead, the rules follow a black letter format, with official “discussions” providing guidance in interpreting the rules.

Significant changes to the California Rules are [proposed](#) and have been adopted by the State Bar of California, but have not been adopted by the Supreme Court. GLSA will continue to monitor the progress of the changes. Click [here](#) for a link to the California Bar site dealing with the proposed changes.

GLSA REGULATION REPORTER STATE LISTING CALIFORNIA

Selected Text Table

State Statutes, Regulations, Attorney General Opinions, Etc.

California Insurance Code -- [§ 119.6 Legal Insurance](#)

Click on link and scroll down to 119.6

California Insurance Code §§ [12125 - 12129 -- Group & Individual Plans for Legal Insurance](#)

California Corporations Code

[Nonprofit Corporation to Administer System of Defraying Cost of Professional Services of Attorneys](#)

California Business & Professions Code -- [Referral Services and Law Corporations](#)

Click on link and scroll down to 6155 and 6160

California Public Contracts [Code §10353.5 -- Legal Services Contracts](#)

Click on link and scroll down to 10353.5

Lawyer Ethics **Rules** and **Opinions**

[Changes proposed](#), not yet approved by the Supreme Court (very large, may take a long time to download)

Rule of Professional Conduct [1-310 -- Forming a Partnership with a Non-Lawyer](#)
(9/14/92)

Rule of Professional Conduct [1-320 -- Financial Arrangements with Non-Lawyers](#)
(9/14/92)

Rule of Professional Conduct [1-400 -- Advertising and Solicitation](#)
(6/1/97)

Rule of Professional Conduct [1-600 -- Legal Service Programs](#)
(9/14/92)

Rule of Professional Conduct [2-200 -- Financial Arrangements Among Lawyers](#)
(9/14/92)

Opinion [2012-184 – Virtual Law Office](#)

GLSA REGULATION REPORTER STATE LISTING

COLORADO

INSURANCE DEPARTMENT CONTACTS

State of Colorado
Department of Regulatory Agencies
Division of Insurance
Commissioner: **Marguerite Salazar**
1560 Broadway, Suite #850
Denver, Colorado 80202

Phone: (303) 894-7499
(800) 930-3745
Fax: (303) 894-7455
Internet: www.dora.state.co.us/insurance

STATE BAR CONTACTS

Colorado Bar Association
Executive Director: **Patrick Flaherty**
1900 Grant Street
Ninth Floor
Denver, Colorado 80203

Phone: (303) 860-1115
Fax: (303) 894-0821
Internet: www.cobar.org/

For further information contact the Colorado Bar Association's Committee on Availability of Legal Services at (303) 860-1115.

REGULATORY SUMMARY

Insurance Statutes:

A legal plan which is deemed to be "insurance" must obtain a certificate of authority to operate as a miscellaneous casualty company, and is regulated under the state Insurance Code [[Col. Rev. Stat. Title 10](#)].

Insurance Regulations:

On August 1, 1991, Division of Insurance released [Regulation 5-1-12](#), which creates a distinction between written agreements which constitute insurance contracts, and others that meet the definition of a written warranty or service contract (and are not subject to regulation by the Division of Insurance). The rules specifically apply to written agreements that provide prepaid legal services benefits.

Under Regulation 5-1-12, a service contract is not considered a contract of insurance where the entity issuing the contract has the ability to and does provide the services, or meets the following conditions:

1. Has a "closed" panel of providers who agree to provide all the services promised to any contract holder of the plan;
2. The panel must be responsible for providing services whether or not the issuer, which collects the dues and pays the providers, becomes bankrupt or otherwise ceases to function in the anticipated manner;
3. The panel of providers must have a factual and realistic capability to provide all the services obligated to the contract holder;
4. There must be no indemnification contracted for by either the administrative unit or the providers of the plan for services or risk contingencies performed by any other entity outside the panel. Indemnification is defined as making compensation for damage, loss, or injury suffered.

LAWYER ETHICS RULES

The new Rules of Professional Conduct became effective January 1, 2008.

GLSA REGULATION REPORTER STATE LISTING COLORADO

Selected Text Table
State Statutes, Regulations, Attorney General Opinions, Etc.
Regulation 5-1-12 -- Warranties and Service Contracts
Lawyer Ethics Rules and <u>Opinions</u>
Rule of Professional Conduct 1.18 -- Duties to Prospective Clients
Rule of Professional Conduct 5.4 -- Professional Independence of a Lawyer
Rule of Professional Conduct 7.1 -- Communication Concerning a Lawyer's Services
Rule of Professional Conduct 7.2 -- Advertising
Rule of Professional Conduct 7.3 -- Direct Contact with Prospective Clients
Ethics Opinion 81 -- Prepaid Legal Services Plans
Ethics Opinion 101 -- Unbundled Services 2006 Addendum
Ethics Opinion 106 -- Referral Fees and Networking Organizations
Ethics Opinion 122 -- Internet Based Marketing Provides criteria for determining whether it is permissible to participate with online marketing programs.
Informal Abstract 01/02-03 -- For-Profit Legal Services Organizations It is unethical for a lawyer to join a for-profit organization to obtain legal work. It is, however, ethical for a lawyer to pay the usual charges of a not-for-profit lawyer referral service or a legal service organization
Informal Abstract 2007-04 Scroll down to 2007-4. Unethical to Pay Consulting Company for Exclusive Right to Receive Referrals for Legal Services
Informal Abstract 2011-03 Under the applicable rules of professional conduct, an attorney may not pay a for-profit referral service to obtain clients because such services are considered referral services and not advertising.

GLSA REGULATION REPORTER STATE LISTING COLORADO

DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-5

PROPERTY AND CASUALTY

Amended Regulation 5-1-12

CONCERNING WARRANTIES AND SERVICE CONTRACTS

Section 1	Authority
Section 2	Scope and Purpose
Section 3	Applicability
Section 4	Definitions
Section 5	Rules
Section 6	Severability
Section 7	Enforcement
Section 8	Effective Date
Section 9	History

Section 1 Authority

This regulation is promulgated and adopted by the Commissioner of Insurance under the authority of §§ 10-1-108(8) and 10-1-109, C.R.S.

Section 2 Scope and Purpose

The purpose of this regulation is to establish a distinction between a written agreement that is an insurance contract pursuant to § 10-1-102(12), C.R.S. and a written agreement that meets the definition of a written warranty or service contract and is not subject to regulation by the Division of Insurance (Division).

The Division has received numerous inquiries regarding contracts which may be insurance and are sold as warranties or service contracts. The definitions and rules contained herein set forth certain conditions which will cause a contract to be considered a contract of insurance, and thereby regulated by the Division, and warranty contracts and service contracts which may not be regulated unless specifically addressed in the Colorado statutes, rules and regulations.

Section 3 Applicability

This regulation applies to written agreements in which services are promised to be rendered or the purchaser of property, personal or real, is guaranteed repair, replacement or indemnification for such repair or replacement of the property on the discovery of defects, loss, or damage to the property during a specified or unlimited period of time after purchase.

This regulation applies to written agreements which provide a benefit including but not limited to, prepaid legal, accounting, or other services.

This regulation shall not apply to contracts issued as warranties and/or service contracts regulated by §§ 42-10-103, et. seq., 42-11-101, et. seq. and 12-61-602, et. seq., C.R.S.

This regulation shall not apply to written agreements providing health benefits or health service plans.

Section 4 Definitions

For the purposes of this regulation:

GLSA REGULATION REPORTER STATE LISTING

COLORADO

- A. "Closed panel" means an individual or a group of providers which are linked by ownership or contract arrangements to the issuer of the contracts.
- B. "Contract" means a written agreement for consideration.
- C. "Indemnify" means to make compensation for damage, loss, or injury suffered.
- D. "Service contract" means a contract whereby specified or designated services are obligated to be performed over a fixed period of time or for a specified duration.
- E. "Supplier" means the manufacturer, wholesaler or retailer of a product or thing being sold and warranted or guaranteed.
- F. "Written warranty" means
 - 1. Any written affirmation of fact or written promise made in connection with a sale of real or personal property by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time, or
 - 2. Any undertaking in writing in connection with the sale of real or personal property by a supplier to refund, repair, replace, or take other remedial action with respect to such product in the event that such property fails to meet the specifications set forth in the undertaking, which written affirmation, promise, or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.

Section 5 Rule

A service contract will not be a contract of insurance if the issuer has the ability to and provides the services or meets the following conditions:

- A. Has a closed panel of providers who agree to provide all the services promised to any contract holder of the plan;
- B. The closed panel must be responsible for providing services whether or not the issuer, which collects the dues and pays the providers, becomes bankrupt or otherwise ceases to function in the anticipated manner;
- C. The closed panel of providers must have a factual and realistic capability to provide all the services obligated to the contract holder; and
- D. There must be no indemnification contracted for by either the administrative unit or the providers of the plan for services or risk contingencies performed by any other entity outside the closed panel.

The issuer of these contracts may be the supplier, an individual, entity or association. Associations may issue service contracts only if the association is solely comprised of members who will provide the services.

A written agreement issued by the supplier of a product which meets the definition of a written warranty under this regulation is not a contract of insurance. Any other person who issues a written warranty, promise or contract to a product buyer for consideration is engaged in the business of insurance.

A contract which agrees or promises to indemnify the purchaser directly or promises to indemnify others for providing such agreed upon services and meets the definition of insurance as set forth in § 10-1-102(12), C.R.S., is a contract of insurance.

If a written agreement is such that any part of the agreement is considered to be a contract of insurance, then the entire agreement shall be considered to be a contract of insurance.

GLSA REGULATION REPORTER STATE LISTING

COLORADO

A written agreement which would otherwise be considered a contract of insurance with the exception of not having charged an explicit consideration, is a contract of insurance if there is any consideration received through other provisions or related agreements.

Section 6 Severability

If any provision of this regulation or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of this regulation shall not be affected.

Section 7 Enforcement

Non compliance with this regulation may result in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance or other laws which include the imposition of civil penalties, issuance of cease and desist orders, and/or suspensions or revocation of license, subject to the requirements of due process.

Section 8 Effective Date

This regulation is effective April 1, 2013.

Section 9 History

Regulation 91-9 was effective August 1, 1991.

Regulation 91-9 was repealed and replaced by Regulation 5-1-2, effective July 1, 1993.

Regulation 5-1-12 was amended, effective January 1, 2002.

Regulation 5-1-12 was amended, effective June 1, 2012.

Regulation 5-1-12 was amended, effective April 1, 2013.

GLSA REGULATION REPORTER STATE LISTING CONNECTICUT

INSURANCE DEPARTMENT CONTACTS

State of Connecticut Department of Insurance
Commissioner: **Katharine L. Wade**
153 Market Street – 7th Floor
Hartford, CT 06103

Phone: (800) 203-3447
Fax: (860) 566-7410
Internet: www.ct.gov/cid/site/default.asp

Department Contacts:

Licensing	860/297-3845
Life & Health	860/297-3862
Market Conduct	860/297-3972
Property & Casualty	860/297-3867

STATE BAR CONTACTS

Connecticut Bar Association
Executive Director: **Douglas S. Brown**
30 Bank Street, P.O. Box 350
New Britain, CT 06050-0350
Phone: (860) 223-4400
Fax: (860) 223-4488
Internet: www.ctbar.org

REGULATORY SUMMARY

Special Statute:

[Chapter 698b](#) Section 38a-230 ff. of the Connecticut General Statutes regulates prepaid legal service plans.

Under this statute, nonprofit legal service corporations are subject to the approval and control of the Insurance Commissioner, regardless of whether these plans are providing “true” insurance.

Insurance companies which are authorized to transact accident and health insurance or liability insurance may be licensed by the Commissioner to issue contracts for the costs of legal services.

INSURANCE DEPARTMENT POLICY

The Connecticut General Statutes do not contain a singular definition of an insurance

contract. The Insurance Department relies on the presence of indemnification in determining whether a contract constitutes an insurance product, and therefore is subject to regulation by the Department.

The Insurance Commissioner, after receiving an opinion from the Attorney General, has determined that a for-profit legal service corporation operating an access plan is not subject to regulation by the Department of Insurance. The opinion was very narrow in that it only applied to that particular plan; therefore, other legal service plans may or may not be deemed insurance products. The plan that was the subject of the attorney general opinion provided certain legal services for a fixed period with a periodic fee or payment and authorized access attorneys to furnish plan participants with a list of available participating attorneys who would provide further services at reduced rates.

Producers

Sec. 38a-245. Solicitation of subscribers; prohibited acts. No person shall be engaged to solicit subscribers to any nonprofit prepaid legal services plan upon a commission basis or upon any other basis whereby the payment of the compensation or expenses of such person shall be conditioned upon the enrollment of subscribers unless the method of solicitation and rate of compensation has the prior written approval of the Insurance Commissioner.

LAWYER ETHICS RULES

Connecticut has adopted a version of the ABA Model Rules of Professional Conduct. Several new rules are proposed including an amendment to Rule 7.2 regarding internet sites purporting to match lawyers and clients.

FILING REQUIREMENTS

An annual reporting statement on the financial condition of the corporation must be filed on or before March 1.

GLSA REGULATION REPORTER STATE LISTING CONNECTICUT

Selected Text Table
State Statutes, Regulations, Attorney General Opinions, Etc.
Connecticut General Statutes -- Title 38A, Chapter 698B: Prepaid Legal Services
Regulations of Connecticut State Agencies -- §§38a-41-3 & 38a-41-4 Requirements For Insurance Companies Applying For A License To Do Business in the State of Connecticut
Connecticut Attorney General Opinion 86-19
Lawyer Ethics Rules and Opinions
Link to Practice Book click on link to PDF which will open a bookmark page, scroll down to the appropriate rule
Rule of Professional Conduct 1.18: Duties to a Prospective Client
Rule of Professional Conduct 5.4: Professional Independence of a Lawyer
Rule of Professional Conduct 7.1: Communications Concerning a Lawyer's Services
Rule of Professional Conduct 7.2: Advertising
Rule of Professional Conduct 7.3: Personal Contact with Prospective Clients
Advertising Advisory Opinions
Advisory Opinion #14-04961 – Website Advertising Prepaid Legal Services

GLSA REGULATION REPORTER STATE LISTING CONNECTICUT

Office of the Attorney General State of Connecticut Opinion No. 86-19 March 5, 1986

Honorable Peter Gillies
Commissioner
Insurance Department
State Office Building
165 Capitol Avenue
Hartford, Connecticut 06106

Dear Commissioner Gillies:

You have requested our opinion as to whether a profit oriented plan to market legal services is subject to regulation by the State Insurance Department as an insurance program. The specific plan is that presently marketed in other states under the tradename "Lawphone." In brief, this plan makes specified legal services available for the periodic payment of a fixed fee, whether the services are used or not. A member is also entitled to be referred to other attorneys as necessary, to whom payment will be made by the member for services rendered. It is our opinion that this plan is not insurance and thus is not subject to regulation by or within the jurisdiction of the Insurance Department. It is also our opinion that this is a for-profit prepaid legal services plan, but it is not subject to regulation by the Insurance Department.

As described by a representative of the parent company, a subscriber, or member, on payment of a periodic fee, is thereby entitled to the following specific legal services during a fixed period without further payment:

1. Unlimited telephone advice and consultation. Toll free calls to a specified attorney as often as necessary, to discuss questions and obtain advice and counsel.
2. Letters and phone calls on behalf of a member when the attorney feels it will result in the prompt resolution of a simple matter.
3. Review of simple standard form documents and contracts (four page maximum) by the attorney.

If the designated attorney determines that any legal matters cannot be adequately treated in the foregoing manner, he or she will, upon request, provide a list of available "participating attorneys" who handle such matters. An optional simple will rider is also available.

Similar "Lawphone" plans are available for small businesses or other income-producing activities. Each plan has certain specific exclusions and limitations.

Participating attorneys will provide members with services for reduced fees. All such fees, plus any costs and expenses, shall be paid by the member and are not reimbursed by the plan. The referral attorney may decline any matter determined to be outside the area of his or her regular practice.

Chapter 693 of the Gen. Stat., § 38-401 et seq., subjects non-profit legal service corporations to the approval and control of the insurance commissioner, without addressing whether they are providing true "insurance." As a for-profit business, "Lawphone" plans are not controlled by this chapter.

The General Statutes do not define an "insurance" contract in a singular manner for all possibilities. One statutory definition, for injuries resulting from damage to property, is in Conn. Gen. Stat. § 38-31:

Any agreement in any form, which in effect provides for the indemnification of one person by another for injurious results to property from a future accident or other contingency, shall, to the extent of such provision for indemnification, constitute a contract of insurance within the meaning of the statutes concerning insurance....

In *Day v. Walsh*, 132 Conn. 5, 12, 42 A.2d 366 (1945), an action on a life insurance policy, the court noted two elements which essentially distinguish insurance from other somewhat similar transactions:

These are that [1] the policy is issued in pursuance of a general scheme to distribute [actual] losses among a large group of persons in the same class, and that [2] each person in the class is required to make a ratable contribution to the general fund from which the losses are paid.

These are the last two of five elements of an insurance contract to which the court refers from *W.R. Vance*, Handbook on the Law of Insurance at 2 (2d ed. 1930) which are repeated verbatim in the current edition. [FN1]

In discussing the question "what is insurance?" Professor Keeton of Harvard has said:

Attempts have sometimes been made, in statutes and elsewhere, to formulate a general definition of insurance for use in determining the reach of these regulatory measures. The success of any such effort is bound to be limited [N]o single concept of insurance is universally useful as a tool of thought and communication about such problems.

GLSA REGULATION REPORTER STATE LISTING

CONNECTICUT

... Though the principal characteristics of insurance are transferring and distributing risk, demonstrating that a transaction has these characteristics falls short of proving that it is an insurance transaction. Whatever the context may be, something more is required.

Consider, for example, ... a lawyer's retainer contract with the client, under which the fee is fixed in advance, at a time when neither can know precisely what legal services will be required during the period of the contract. [FN2] [This transaction is] generally not treated as insurance in legal contexts.... Yet [it] clearly involve[s] risk transference and risk distribution.

R.E. Keeton, Basic Text on Insurance Law § 1.2(c) (1971).

The "Lawphone" plans are not structured to indemnify a member for future contingent losses; no general fund is created from which to pay, reimburse or indemnify members for future actual legal fees or related expenses; and there is no rating evaluation of individual members, as risks, to calculate rated premiums. As explained by a representative of the plan, the specified attorney is paid a fixed "per member" fee per month, for which the attorney agrees to provide to members the services or referrals noted above, if and when needed.

A similar question has been previously answered by this office. Contracts for Hospitalization, 17 Conn. Op. Atty. Gen. 410 (1932). On payment of a fixed fee to a hospital, an individual was entitled to hospitalization, as needed, during a given year without further expense, up to a set limit of days or weeks. We opined that indemnity is an essential element of insurance, without which a contract was not one of insurance. The hospital contract was determined to be one of service, not one of indemnity, and therefore not an insurance contract.

A more recent plan for dental services, very similar to "Lawphone", was held by the Utah Supreme Court not to be an insurance plan. Prepaid Dental Services, Inc. v. Day, Utah, 615 P.2d 1271 (1980). Plaintiff therein contracted with employees for specific dental services to be provided to employees for a monthly charge. Plaintiff also contracted with dentists to provide the services as needed, for which agreement the dentists were paid a monthly fee, whether or not they provided any agreed services. The applicable Utah statute defined insurance as "a contract whereby one undertakes to indemnify another or pay or allow a specified or ascertainable amount or benefit upon determinable risk contingencies." [FN3] The court found that no risk was assumed by the plaintiff, without which the contract was not insurance, stating that "[m]ost courts which have considered this question have determined that such contracts do not constitute insurance where the professional is paid a 'retainer' as distinguished from a fee for the service provided." Id. at 1273 (citations omitted). See also Professional Lens Plan, Inc. v. Dept. of Insurance, Fla. App., 387 So. 2d 548, (1980), and cases at 44 C.J.S. Insurance § 1 nn. 5 & 6 (1945).

The "Lawphone" subscriber fees are essentially in the nature of retainer fees, for which members are entitled to specific legal services as and when needed. The plan does not indemnify members for future contingencies, and thus assumes no risk of paying for such contingencies. It is our opinion that the plan is not insurance and is not subject to approval or regulation by the State Insurance Department. We emphasize that this opinion relates only to the specific facts addressed. Other legal service plans with differing factors may or may not constitute insurance.

Very truly yours,
Joseph I. Lieberman
Attorney General

Brewster Blackall
Assistant Attorney General

[FN1]. The contract of insurance ... is distinguished by the presence of five elements:

- (a) The insured possesses an interest of some kind susceptible of pecuniary estimation, known as an insurable interest.
- (b) The insured is subject to a risk of loss through the destruction or impairment of that interest by the happening of designated perils.
- (c) The insurer assumes that risk of loss.
- (d) Such assumption is part of a general scheme to distribute actual losses among a large group of persons bearing somewhat similar risks.
- (e) As consideration for the insurer's promise, the insured makes a ratable contribution, called a premium, to a general insurance fund.

A contract possessing only the three elements first named is a risk-shifting device, but not a contract of insurance, which is a risk-distributing device; but, if it possesses the other two as well, it is a contract of insurance, whatever be its name or its form. W.R. Vance, Handbook on the Law of Insurance at 2 (3rd ed. by B. Anderson, 1951).

[FN2]. See Keeton footnote 6 re: Transportation Guarantee Co. v. Jellins, 29 Cal. 2d 242, 248, 174 P.2d 625, 629 (1946).

[FN3]. Utah Code Ann. § 31-1-7, (1953), as amended.

1986 Conn. Op. Atty. Gen. 66, 1986 WL 289116 (Conn.A.G.)

GLSA REGULATION REPORTER STATE LISTING DELAWARE

INSURANCE DEPARTMENT CONTACTS

Delaware Insurance Department
Insurance Commissioner: **Karen Weldin Stewart**
841 Silver Lake Blvd.
Dover, DE 19904

Phone: (302) 674-7300
Fax: (302) 739-6278
Internet: <http://www.delawareinsurance.gov/>

Department Contacts:

Producer Licensing – (302) 674-7390
licensing@deins.state.de.us

STATE BAR CONTACTS

Delaware State Bar Association
Executive Director: **Johnna Darby**
301 North Market Street
Wilmington, DE 19801

Phone: (302) 658-5279
Fax: (302) 658-5212
Internet: www.dsba.org

SUPREME COURT CONTACTS

[Supreme Court of Delaware](#)

Office of the Disciplinary Counsel

Chief Counsel: **Jennifer-Kate Aaronson**
Carvel State Office Building
820 North French Street, 11th Floor
Wilmington, DE 19801-3545

Phone: (302) 577-7042
Fax: (302) 577-7048

INSURANCE DEPARTMENT POLICY

Commercial prepaid legal services are considered casualty insurance products and may be sold by any company with casualty or multi-lines authorization.

Access plans may be exempted from insurance regulation if they offer limited advice and consultation.

LAWYER ETHICS RULES

In 1985 Delaware adopted rules based on the ABA Model Rules of Professional Conduct. The Rules were revised in 1997 and again in 2003 to more closely parallel the advertising rules in the ABA Model Rules. The advertising rules were amended in 2013.

GLSA REGULATION REPORTER STATE LISTING *DELAWARE*

Links to Selected Text
State Statutes, Regulations, Attorney General Opinions, Etc.
Lawyer Ethics Rules and Opinions
The Rules download in a 31 page PDF. The page numbers below refer to each rule's location within the document (the version without comments, page numbers will be different in the version with comments.) The initial PDF does NOT include updates, those are included in a separate supreme court order.
Rule of Professional Conduct 1.18: Duties to Prospective Client Page 17 UPDATED 2013 CHECK UPDATE
Rule of Professional Conduct 5.4: Professional Independence of a Lawyer Page 24
Rule of Professional Conduct 7.1: Communications Concerning a Lawyer's Services Page 27 UPDATED 2013 CHECK UPDATE
Rule of Professional Conduct 7.2: Advertising Page 27 UPDATED 2013 CHECK UPDATE
Rule of Professional Conduct 7.3: Direct Contact with Prospective Clients Page 27 UPDATED 2013 CHECK UPDATE
Delaware State Bar Association - Committee on Professional Ethics -- Opinion 1994-2

GLSA REGULATION REPORTER STATE LISTING

DISTRICT OF COLUMBIA

INSURANCE DEPARTMENT CONTACTS

Department of Insurance, Securities and Banking
Commissioner: **Stephen C. Taylor**
810 First Street, NE – Suite #701
Washington, D.C. 20002
Phone: (202) 727-8000
Fax: (202) 535-1196
Internet: <http://disb.dc.gov>

Agent & Broker Licenses: (202) 442-7813
Providers Licenses: (202) 442-7819

Filing checklists [here](#)

STATE BAR CONTACTS

The District of Columbia Bar Association
Executive Director: **Katherine A. Mazzaferri**
1101 K Street NW – Suite 200
Washington, D.C. 20005
Phone: (202) 737-4700
Fax: (202) 626-3471
Internet: www.dcbbar.org

Bar Association of the District of Columbia
(voluntary bar)
1016 16th Street, NW, Ste. 101
Washington, D.C. 20036
Phone: (202) 223-6600
Fax: (202) 293-3388
Internet: www.badc.org

REGULATORY SUMMARY

Insurance Statutes: Prepaid legal service insurance policies have been approved under the authority of the casualty section of the District of

Columbia Insurance Code. These policies may only be written on an individual basis with coverage being limited to fortuitous events. (31-2502.11(I))

Section 31-2502.02 requires those seeking to write casualty insurance policies to obtain a Certificate of Authority before transacting the business of insurance in the District of Columbia.

INSURANCE DEPARTMENT POLICY

The commissioner requires companies seeking to transact business in the District of Columbia to either have two years of experience in the company's home state, or if beginning anew in the District of Columbia, the superintendent will review proposed rates and the five year financial projections.

The Insurance Department takes the historical view that plans that do not cover fortuitous events are not "insurance" and therefore are not regulated as insurance products. An access plan not sponsored by an insurance company has been allowed to operate. Most commercial prepaid legal plans operating in the District are not regulated by the Department.

LAWYER ETHICS RULES

The District of Columbia Court of Appeals has adopted ethics rules patterned after the ABA Model Rules of Professional Conduct. Please note that some ethics opinions were affected by the changes in 2007.

GLSA REGULATION REPORTER STATE LISTING

DISTRICT OF COLUMBIA

Links to Selected Text
State <u>Statutes</u>, Regulations, Attorney General Opinions, Etc.
The link takes you to all statutes. Scroll down to Title 31, click to expand and scroll to Subtitle III, click on Chapter 25, then to subchapter II and all statutes are available.
District of Columbia Code -- § 31-2502.11: Kinds of insurance authorized
District of Columbia Code -- § 31-2502.13: Minimum capital and surplus requirements
DC Municipal Regulations – Chapter 26A – Insurance
Lawyer Ethics <u>Rules</u> and <u>Opinions</u>
Rule of Professional Conduct 1.18 : Duties to Prospective Client
Rule of Professional Conduct 5.4 : Professional Independence of a Lawyer
Rule of Professional Conduct 7.1 : Communications Concerning a Lawyer’s Services
DC Bar Legal Ethics Committee -- Ethics Opinions Opinion 225 – Prepaid Legal Services Opinion 302 – Soliciting plaintiffs in class action – pre-2007 Rules Opinion 314 – Non-lawyer union employee supervising union lawyer Opinion 329 – Non-profit fee arrangement Opinion 330 – Unbundling legal services Opinion 342 – Internet based lawyer referral services requiring payment Opinion 361 – Compensation from non-lawyer entity for referral (Opinion 245 partially overturned) Opinion 369 – Sharing of legal fees with a lawyer referral service – opinion has a good review of rules on referral payments

GLSA REGULATION REPORTER STATE LISTING FLORIDA

INSURANCE DEPARTMENT CONTACTS

Florida Financial Services Commission
Office of Insurance Regulation: **Kevin M. McCarty,**
Commissioner
200 East Gaines Street
Tallahassee, Florida 32399-0300
Phone: (850) 413-3140
Fax: (850) 488-2349
Internet: www.floir.com/

STATE BAR CONTACTS

The Florida Bar
Executive Director: **John F. Harkness, Jr.**
651 East Jefferson Street
Tallahassee, Florida 32399-2300
Phone: (850) 561-5600
Fax: (850) 561-5826
Internet: www.flabar.org

[Staff Contact, State Bar Committee on Group and Prepaid Legal Services](#)

REGULATORY SUMMARY

Special Statute:

Commercial prepaid legal service plans are regulated under the Florida Legal Expense Insurance Act [[Chapter 642 of the Florida Insurance Code](#)]. Corporations authorized to transact life or casualty insurance can add legal expense insurance as an additional line by complying with the provisions in Chapter 642.

Insurance Department Policy:

The Department has determined that limited access plans are included in the definition of legal expense insurance and must comply with the provisions of [Chapter 642](#).

LAWYER ETHICS RULES

Florida has adopted ethics rules which mirror the ABA Model Rules. The Advertising Rules were amended effective May 1, 2013. Florida's advertising rules are very complex, please review them carefully.

Registration with State Bar:

The Board of Governors revised the Rules regulating Group and Prepaid Legal Services. The requirements for establishing a plan and applying for approval are set forth in Rule 9. The Standing Committee on Prepaid Legal Services reviews the plan applications and forwards its recommendation to the Board of Governors. [Rule 9-2.3](#)

All plans must be filed with and approved by The Florida Bar [see Rules 9-2.2 - 9-2.5].

Annual renewals are required by [Rule 9-2.5](#).

GLSA REGULATION REPORTER STATE LISTING FLORIDA

Links to Selected Text
State Statutes, Regulations, Attorney General Opinions, Etc.
Florida Statutes, Title XXXVII, Ch. 642: Legal Expense Insurance
Florida Administrative Code 69O-201 -- Legal Expense Insurance Corporations
Lawyer Ethics Rules and <u>Opinions</u>
Resources for the Bar's New Policies on Lawyer Advertising
Rule of Professional Conduct 4-1.18: Duties to Prospective Clients
Rule of Professional Conduct 4-5.4: Professional Independence of a Lawyer
Rule of Professional Conduct 4-7.11: Application of Rules
Rule of Professional Conduct 4-7.12: Required Content
Rule of Professional Conduct 4-7.13: Deceptive and Inherently Misleading Advertisements
Rule of Professional Conduct 4-7.14: Potentially Misleading Advertisements
Rule of Professional Conduct 4-7.15: Unduly Manipulative or Intrusive Advertisements
Rule of Professional Conduct 4-7.16: Presumptively Valid Content
Rule of Professional Conduct 4-7.17: Paying for Advertising and Promotion
Rule of Professional Conduct 4-7.18: Direct Contact With Prospective Clients
Rule of Professional Conduct 4-7.19: Evaluation of Advertisements
Rule of Professional Conduct 4-7.20: Exemptions From the Filing and Review Requirement
Rule of Professional Conduct 4-7.22: Lawyer Referral Services
Florida Bar Rules 9-1.1 - 9-3.4: Group and Prepaid Legal Services Rules
Professional Ethics Committee of the Florida Bar Ethics Opinion 00-4 – limited on-line legal services Ethics Opinion 07-3 – unilateral communications to lawyers Ethics Opinion 12-3 – Permissibility of using cloud computing (January 2013) No opinions on line after 10/14/2014, GLSA will continue to monitor for updates

GLSA REGULATION REPORTER STATE LISTING GEORGIA

INSURANCE DEPARTMENT CONTACTS

Office of the Comptroller General
Insurance Commissioner: **Ralph T. Hudgens**
Floyd Memorial Building
Two Martin L. King, Jr. Drive
West Tower – Suite 704
Atlanta, GA 30334

Phone: (404) 656-2070
(800) 656-2298
Fax: (404) 657-8542
Internet: <https://www.oci.ga.gov/>

Department Contacts:

Agent Licensing: (404) 656-2101
Examinations: (404) 656-2101
Life & Health: (404) 656-2085
Property & Casualty: (404) 656-4449
Regulatory Services: (404) 656-2074

STATE BAR CONTACTS

State Bar of Georgia
Executive Director: **Jeff Davis**
104 Marietta St. N.W., Suite 100
Atlanta, GA 30303

Phone: (404) 527-8700
(800) 334-6865
Fax: (404) 527-8717
Internet: www.gabar.org/

REGULATORY SUMMARY

Special Statute:

Prepaid legal service plans are regulated under Title 33, Chapter 35 of the Georgia Code. Under this statute, a “*prepaid legal service plan*” is defined as “any arrangement whereby responsibility is undertaken to provide, arrange for, or reimburse

any part of the cost of any legal services, for a consideration consisting in part of prepaid or periodic charges or dues.”

Legal service plan sponsors are required to obtain a license from the State Department of Insurance. Those authorized to write casualty, life, or accident and sickness insurance in the state are authorized to write prepaid legal services insurance as well.

Annual statements must be filed on or before March 1 (33-35-16).

Insurance Department Regulations:

Chapter 120-2-29 was adopted to implement the provisions of the special statute regulating prepaid legal plans.

The forms are all available for [download](#).

In accordance with state law, beginning January 1, 2012, the Office of Insurance and Safety Fire Commissioner will be changing its procedures regarding the verification of lawful presence of persons applying for all licenses, permits, registrations and certificates.

LAWYER ETHICS RULES

Georgia has adopted rules which mirror the ABA Model Rules.

Registration with State Bar:

A copy of each subscription contract and underwriting rules must be submitted to the State Bar of Georgia by the plan sponsor [Georgia Code Section 33-35-8].

GLSA REGULATION REPORTER STATE LISTING

GEORGIA

Links to Selected Text
State Statutes , Regulations, Attorney General Opinions, Etc.
Code of Georgia Title 33, Chapter 35: Prepaid Legal Services Plans Link opens entire Georgia Code. Scroll down to Title 33, click and scroll down to Chapter 35. 33-35-15 Amended September 2010
Georgia Administrative Code -- Chapter 120-2-29: Prepaid Legal Services Plans
Lawyer Ethics Rules and Opinions Rules Updates
Professional Conduct Rule 5.4: Professional Independence of a Lawyer
Professional Conduct Rule 7.1: Communications Concerning a Lawyer's Services
Professional Conduct Rule 7.2 : Advertising Updated March 21, 2014
Professional Conduct Rule 7.3: Direct Contact with Prospective Clients
Ethics Opinions Rule 5.4 – Formal Advisory Opinion 11-1 - Flat Fee Arrangements

GLSA REGULATION REPORTER STATE LISTING

HAWAII

INSURANCE DEPARTMENT CONTACTS

Department of Commerce and Consumer Affairs
Insurance Commissioner: **Gordon I. Ito**
King Kalakaua Building
335 Merchant Street, Room 213
Honolulu, HI 96813

Phone: (808) 586-2790
Fax: (808) 586-2806
Internet: <http://hawaii.gov/dcca/ins/>

STATE BAR CONTACTS

Hawaii State Bar Association
Executive Director: **Patricia Mau-Shimizu**
1100 Alakea Street, Suite 1000
Honolulu, HI 96813

Phone: (808) 537-1868
Fax: (808) 521-7936
Internet: www.hsba.org/

REGULATORY SUMMARY

Special Statute:

Chapter 488 of Hawaii Revised Statutes governs prepaid legal services and provides regulation by the state's Department of Commerce and Consumer Affairs.

The statute is technically not an insurance law, therefore any plan which complies with the law is

allowed to operate. The regulatory scheme of Hawaii allows both life and casualty insurers to offer legal expense insurance.

Exempt from the statute are plans in which either the group or plan administrator is subject to regulation under the statutory provisions regulating insurance or mutual and fraternal benefit societies, plans in which any party is the federal government or its agencies, and employee benefit plans regulated by ERISA.

Under the statute, prepaid legal plans are to be offered on a group basis, but an opinion by the state Attorney General found that Chapter 488 also applies to plans whose membership is open to the general public [Att. Gen. Op. 86-22].

Changes in 2011 strengthened the laws regulating prepaid legal plans and gave the Department of Commerce and Consumer Affairs more robust enforcement and regulatory authority over group and prepaid legal services plans. All plans must register with the Department of Commerce and Consumer Affairs.

LAWYER ETHICS RULES

Hawaii adopted Rules of Professional Conduct modeled after the ABA Model Rules

The rules do not require plan approval by the State Bar prior to operation.

GLSA REGULATION REPORTER STATE LISTING

HAWAII

Links to Selected Text
State Statutes, Regulations, Attorney General Opinions, Etc.
Hawaii Revised Statutes -- Division 2, Title 26, Chapter 488 Prepaid Legal Services Link opens on listing of sections, click "Next" to see each section.
Hawaii Revised Statutes – 431:1-201: Definitions
Hawaii Revised Statutes - 432:2-101 Fraternal Organizations
Department of the Attorney General -- State of Hawaii Opinion No. 86-22
Lawyer Ethics Rules and Opinions
Hawaii Rule of Professional Conduct 1.18: Duties to Prospective Clients (1/1/14)
Hawaii Rule of Professional Conduct 5.4: Professional Independence of a Lawyer (7/1/00)
Hawaii Rule of Professional Conduct 7.1: Communications Concerning a Lawyer's Services
Hawaii Rule of Professional Conduct 7.2: Advertising (1/1/09)
Hawaii Rule of Professional Conduct 7.3: Direct Contact with Prospective Clients (1/1/02)
Formal Opinion No. 46 Referral Fees – Updated March 2015

GLSA REGULATION REPORTER STATE LISTING

HAWAII

Department of the Attorney General State of Hawaii

Opinion No. 86-22
December 1, 1986

Re: Applicability of Chapter 488, Hawaii Revised Statutes, to a Prepaid Legal Service Plan Whose Membership is Open to the Public

The Honorable Russel S. Nagata
Director of Commerce and Consumer Affairs
State of Hawaii
1010 Richards Street
Honolulu, Hawaii 96813

Dear Mr. Nagata:

This is in response to the letter of May 22, 1986, from Ms. Sheryl Lee A. Nagata, Time Share Administrator, requesting an opinion as to whether chapter 488, Hawaii Revised Statutes, regulating prepaid legal service plans, applies to a plan whose membership is open to the public. We answer in the affirmative.

Section 488-1, Hawaii Revised Statutes, defines prepaid legal service plan as "a group legal service plan in which the cost of the services are prepaid by the group member or by some other person or organization in the member's behalf." The phrase "group legal service plan" is defined in section 488-1 as "a plan by which legal services are rendered to individual members of a group identifiable in terms of some common interest." The issue is whether a plan whose membership is open to the general public is a group legal service plan.

It is a well-accepted rule of statutory construction that statutes should be construed to give effect to the intention of the legislature as gleaned primarily from the language contained in the statute itself. Hawaii Public Employment Relations Board v. United Public Workers, Local 646, AFSCME, AFL- CIO, 66 Hawaii 461, 469, 667 P.2d 783, 789 (1983); State v. Uj, 66 Hawaii 366, 371, 663 P.2d 630, 633 (1983); Survivors of Medeiros v. Maui Land and Pineapple Co., 66 Hawaii 290, 297, 660 P.2d 1316, 1321 (1983); Treloar v. Swinerton and Walberg Co., 65 Hawaii 415, 420-21, 653 P.2d 420, 424 (1982); Black Construction Corp. v. Aqsalud, 64 Hawaii 274, 283, 639 P.2d 1088, 1094, appeal dismissed, 459 U.S. 1011, 103 S. Ct. 367, 74 L. Ed. 2d 504 (1982); In re Hawaiian Telephone Co., 61 Hawaii 572, 577, 608 P.2d 383, 388 (1980); Keller v. Thompson, 56 Hawaii 183, 189, 532 P.2d 664, 669 (1975). Moreover, the Hawaii Supreme Court has stated that, although legislative intent is to be obtained primarily from the language used in a statute, when aids to construction of the meaning of words, as used in the statute, are available, there can be no rule of law which forbids their use, however clear the words may appear on superficial examination. Treloar v. Swinerton and Walberg Co., 65 Hawaii 415, 421, 653 P.2d 420, 424 (1982); Crawford v. Financial Plaza Contractors, 64 Hawaii 415, 420, 643 P.2d 48, 52 (1982).

The definition of "group legal service plan" would clearly apply to a plan providing legal services to members of a credit union, business organization, or club. We also believe that the definition would apply to consumers who have as a common interest the desire to have available affordable legal services and, for that purpose, form a group to secure such services through a prepaid legal service plan. A plan by which legal services are rendered to a consumer group, like the one just described, is like a plan whose members are from the general public. The members of the plan are the group and its common interest is securing legal services through the plan.

This construction of the definition of "group legal service plan" is consistent with the intention of the legislature, as expressed in the committee reports on S.B. No. 1775-76, which became Act 156, 1976 Haw. Sess. Laws 282, and was designated as chapter 488, Hawaii Revised Statutes. With respect to the regulatory provisions of Act 156, the conference committee report stated:

This bill provides for the regulation of prepaid legal services by the department of regulatory agencies by subjecting prepaid legal service plans to consumer protective legislation.

Senate Conf. Comm. Rep. No. 8-76, 1976 Hawaii S. J. 839; House Conf. Comm. Rep. No. 17-76, 1976 Hawaii H. J. 1102 (emphasis added).

The conference committee report stated further as follows:

Prepaid legal service plans are a method by which legal services may be provided to lower and middle income persons at a price they can afford. A prepaid legal service plan is a plan between a group of consumers and one or more attorneys in which the attorneys agree to provide certain legal services to the group. Through formation of a group of

GLSA REGULATION REPORTER STATE LISTING

HAWAII

consumers, these legal services are provided at a lower price than would be available on an individual basis. In addition, the prepaid legal service plans are a method by which legal services may be afforded to lower and middle income persons at a price they can afford. A prepaid legal service plan is a group legal service plan in which the cost of the services have been prepaid by the group member or by some other person or organization in the member's behalf. A group legal service plan means a prepaid plan by which legal services are rendered to individual members of a group identifiable in terms of some common interest. Id.

From the foregoing excerpts, we believe that the legislative intent was to subject prepaid legal service plans to consumer protective legislation. Furthermore, the Legislature envisioned that plans would be established by consumers who had formed themselves into groups. We see no difference between consumers forming a group and opening membership to the group to other consumers who share an interest in affordable legal services and the promoter of a plan who intends to solicit members from among consumers in this State. The members of the group have a common interest in obtaining legal services through the plan. We also note that the purpose of promoting consumer protection by requiring plans to register, post a bond, and file annual reports and by regulating investments of plans would be frustrated if plans which solicit members from the public are excluded from the statutory definition.

Based on the language of section 488-1 and the legislative history of chapter 488, it is our opinion that chapter 488 is applicable to a plan whose membership is open to the public.

Very truly yours,
Susan Tamura Sato
Deputy Attorney General

Approved:
Corinne K.A. Watanabe
Attorney General
1986 WL 80030 (Hawaii A.G.)

GLSA REGULATION REPORTER STATE LISTING

IDAHO

INSURANCE DEPARTMENT CONTACTS

State of Idaho Department of Insurance
Director of Insurance: **Dean Cameron**
700 West State Street – 3rd Floor
P.O. Box 83720
Boise, ID 83720-0043

Phone: (208) 334-4250
Fax: (208) 334-4398
Internet: <http://www.doi.idaho.gov/>

ATTORNEY GENERAL

Lawrence Wasden
700 W. Jefferson St.
P.O. Box 83720
Boise, ID 83720

Consumer Protection Division
Phone: (208) 334-2424
Fax: (208) 334-2830
Internet: <http://www.ag.idaho.gov/index.html>

STATE BAR CONTACTS

Idaho State Bar
Executive Director: **Diane K. Minnich**
525 West Jefferson Street
Boise, ID 83702

Phone: (208) 334-4500
Fax: (208) 334-4515
Internet: <http://isb.idaho.gov/>

REGULATORY SUMMARY

In 2001 the Idaho legislature clarified the definition of Legal Service Expense Plans by taking them out of the Insurance title.

This bill clarifies that these plans are or should be regulated by the Attorney General under the [consumer protection statutes](#) and by the Idaho State Bar Association under practice of law statutes, and are not to be marketed as “insurance.”

LAWYER ETHICS RULES

On March 15, 2004, the Idaho Supreme Court issued an order adopting the 2003 amended Idaho Rules of Professional Conduct, including the comments. The new rules became effective July 1, 2004. The Court adopted the comments as well.

GLSA REGULATION REPORTER STATE LISTING

IDAHO

Links to Selected Text
State Statutes, Regulations, Attorney General Opinions, Etc.
Idaho Statutes – Title 48 Monopolies and Trade Practices, Chapter 6 Consumer Protection Act
Idaho Statutes – Title 41 Insurance – 41-114B Legal Service Expense Plans
Idaho Rules – Administrative Rules
Lawyer Ethics Rules and Opinions
The link above opens a 67 page PDF. The page numbers below refer to each rule's location within the PDF. Idaho ethics opinions are available on-line in PDF. Formal Committee on Ethics and Professional Responsibility discontinued in 1999.
Rule of Professional Conduct 1.18: Duties to Prospective Client Page 37 (Rule 1.18 and Commentary amended 3-17-14 effective 7-1-14)
Rule of Professional Conduct 5.4: Professional Independence of a Lawyer Page 52
Rule of Professional Conduct 7.1: Communications Concerning a Lawyer's Services Page 59 (Section [3] amended 3-7-14, effective 7-1-14)
Rule of Professional Conduct 7.2: Advertising Page 60 (amended 3-7-14, effective 7-1-14)
Rule of Professional Conduct 7.3: Personal Contact with Prospective Clients Page 63 (Rule 7.3 and Commentary amended 3-17-14 effective 7-1-14)
Formal Opinion No. 87 – 1975 permissible boundaries of group legal services
Formal Opinion No. 114 – 1983 Propriety of lawyer participating in private attorney referral service

GLSA REGULATION REPORTER STATE LISTING

ILLINOIS

INSURANCE DEPARTMENT CONTACTS

Illinois Department of Insurance
Acting Director – **Anne Melissa Dowling**
320 West Washington St. – 4th Floor
Springfield, IL 62767-0001
Phone: (217) 782-4515
Fax: (217) 782-5020
Internet: <http://insurance.illinois.gov/>

Department of Insurance (Chicago Office):
100 West Randolph St.
Suite 5-570
Chicago, IL 60601
Phone: (312) 814-2427
Fax: (312) 814-5435

STATE BAR CONTACTS

Illinois State Bar Association
Executive Director: **Robert E. Craghead**
Illinois Bar Center
424 S. 2nd St.
Springfield, IL 62701-1779

Phone: (217) 525-1760
(800) 252-8908 (in state only)
Fax: (217) 525-0712
Internet: www.isba.org

Chicago Office:
20 S. Clark Street
Suite #900
Chicago, IL 60603-1802
Phone: (312) 726-8775

STATE DISCIPLINARY BODY

Illinois Supreme Court Attorney Registration & Disciplinary Commission (ARDC)
130 E. Randolph Drive
Suite #1500
Chicago, IL 60601-6219
Phone: (312) 565-2600
(800) 826-8625
Fax: (312) 565-2320
Internet: <http://www.iardc.org>

REGULATORY SUMMARY

Article 1, Section 4 of the Illinois Insurance Code lists several classes of insurance, including legal expense insurance (Class 2 (I)).

Group expense insurance is defined at Chapter 215, Act 5, Art. XXXIX §900 of the Illinois Compiled Statutes. Article XXXIX regulates group legal expense insurance as a whole.

LAWYER ETHICS RULES

Illinois adopted rules based on the ABA Model Rules of Professional Conduct, and were amended effective January 1, 2010. Rule 1.18 Duties to Prospective Clients was added. In addition, Rule 7.2 was amended to include electronic communications.

Registration with State Supreme Court:

Attorneys practicing in the state are prohibited from participating in group legal services plans that have not registered with the Administrator of the Attorney Registration and Disciplinary Commission [Illinois Supreme Court Rule 730].

Supreme Court Rule 730 provides for registration of group legal services plans. Plan registration does not signify approval of the plan. Rule 730(d) provides that neither the Commission nor the Administrator shall approve or disapprove of a plan for group legal services or render any legal opinion regarding any plan. No registration fee is charged.

The Clerk's office coordinates the annual registration of group legal service plans. The Clerk maintains the plan filings and an index for all registered group legal services plans. The plan registration year begins on July 1 and continues through June 30 of the following year. The Clerk mails renewal registration forms in May of each year. Any questions regarding registration or how to obtain copies of any plan should be addressed to the Clerk's Office at 312-565-2600, or by facsimile at (312) 565-1806, or by mailing the request to the Clerk, Attorney Registration and Disciplinary Commission, 130 East Randolph Drive, Suite 1100, Chicago, Illinois 60601.

GLSA REGULATION REPORTER STATE LISTING

ILLINOIS

Links to Selected Text
State Statutes, Regulations, Attorney General Opinions, Etc.
Illinois Compiled Statutes -- Chapter 215, Act 5, Article 1, Section 4(c)
Illinois Compiled Statutes -- Chapter 215, Act 5, Article XXXIX: Group Legal Expense Insurance
Illinois Compiled Statutes -- Chapter 215, Act 5, Article XXXI: Insurance Producers, Limited Insurance Representative and Registered Firms
Lawyer Ethics <u>Rules</u> and <u>Opinions</u>
Click on rules page and scroll to appropriate rule.
Rule of Professional Conduct 1.18: Duties to Prospective Clients Amended eff. 1/1/16
Rule of Professional Conduct 5.4: Professional Independence of a Lawyer
Rule of Professional Conduct 7.1: Communications Concerning a Lawyer's Services Amended eff. 1/1/16
Rule of Professional Conduct 7.2: Advertising Amended eff. 1/1/16
Rule of Professional Conduct 7.3: Direct Contact with a Prospective Client Amended eff. 1/1/16
Rules on Admission & Discipline of Attorneys: Rule 730-Group Legal Services
Opinion 12-03 January 2012 Advertising and Solicitation; Confidentiality; Referral Fees and Arrangements
Opinion 15-04 September 2015 Division of Fees; Referral Fees and Arrangements

GLSA REGULATION REPORTER STATE LISTING

INDIANA

INSURANCE DEPARTMENT CONTACTS

State of Indiana Department of Insurance
Commissioner: **Stephen W. Robertson**
311 West Washington St. – Suite 300
Indianapolis, IN 46204-2787
Phone: (317) 232-2385
Fax: (317) 232-5251
Internet: www.ai.org/idoi

Department Contacts:

Agency Services/Agent Licensing Division (317) 234-1138
Enforcement Division (317) 233-4243
Company Services Division (317) 232-3437

STATE BAR CONTACTS

Indiana State Bar Association
Executive Director: **Thomas A. Pyrz**
One Indiana Square, Suite 530
Indianapolis, IN 46204
Phone: (317) 639-5465
(800) 266-2581
Fax: (317) 266-2588
Internet: www.inbar.org

REGULATORY SUMMARY

Insurance Statutes:

Legal insurance is classified in General Insurance Code [Section 27-1-5-1](#) as a Class 2(m) risk of loss. Under this section, legal expense insurers can offer coverage that insures against legal expenses such as attorney fees, court costs, witness fees, and incidental expenses incurred in

connection with the use of the professional services of attorneys-at-law, in consideration of a specified payment for an interval of time.

Currently, legal expense insurance can be offered by insurance companies, which have a property/casualty license. Life insurance companies are not permitted to offer legal expense insurance.

LAWYER ETHICS RULES

Indiana's rules generally follow the ABA Model Rules of Professional Conduct.

Registration with State Supreme Court:

A copy of the plan description must be filed with the Clerk of the Supreme Court and Court of Appeals, with a \$100 fee. Annual reports are to be filed between February 1 and March 31, together with a \$50 fee. There is an additional \$25 late fee for reports filed after March 31. Moreover, a copy of each annual report must be sent to plan members [Indiana Rules of Court, Rules for Admission to the Bar and the Discipline of Attorneys, [Rule 26](#)].

Lawyer Referral Programs

Lawyer Referral Programs are addressed in Rule of Professional Conduct 7.3(e). Referral services operated, sponsored, or approved by any organization listed in Rule 7.3(e)(1)(D) are acceptable.

GLSA REGULATION REPORTER STATE LISTING

INDIANA

Links to Selected Text
State Statutes, Regulations, Attorney General Opinions, etc.
Indiana General Insurance Code -- Title 27, Article 7, Chapter 8: Legal Insurance (page 866)
Lawyer Ethics Rules and Opinions
http://www.state.in.us/judiciary/rules/prof_conduct/index.html click on the link and scroll down to the rule in the Table of Contents
Rule of Professional Conduct 1.18: Duties to Prospective Client
Rule of Professional Conduct 5.4: Professional Independence of a Lawyer
Rule of Professional Conduct 7.2: Publicity and Advertising
Rule of Professional Conduct 7.3: Recommendation or Solicitation of Professional Employment
Rules for the Admission to the Bar and Discipline of Attorneys 26: Group Legal Service Plans Click on link and scroll down to Rule 26
Opinion of the Ethics Committee of the Indiana State Bar Association -- Opinion 1-2004 working with Bank to provide services
Opinion of the Ethics Committee of the Indiana State Bar Association -- Opinion 1-2012 Group Coupon marketing

GLSA REGULATION REPORTER STATE LISTING

IOWA

INSURANCE DEPARTMENT CONTACTS

State of Iowa Insurance Division
Commissioner: **Nick Gerhart**
601 Locust St., 4th Floor.
Des Moines, IA 50309-1212

Phone: (515) 281-5705
(877) 955-1212
Fax: (515) 281-3059
Internet: www.iid.state.ia.us/

STATE BAR CONTACTS

Iowa State Bar Association
Executive Director: **Dwight Dinkla**
625 East Court Ave.
Des Moines, IA 50309

Phone: (515) 243-3179
Fax: (515) 243-2511
Internet: <http://www.iowabar.org/>

STATE SUPREME COURT CONTACTS

Supreme Court of Iowa
Client Security & Attorney Disciplinary Commission
Assistant Court Administrator
State Capitol
Des Moines, IA 50319
Phone: (515) 246-8076

REGULATORY SUMMARY

Special Statute:

The Iowa Legal Expense Insurance Act, has been repealed. Legal expense insurance is now regulated as miscellaneous casualty insurance.

LAWYER ETHICS RULES

Rule 7.7(d)4 allows a lawyer recommended by, paid by, or whose legal services are furnished by, a "qualified legal assistance organization," to authorize the organization to use means of dignified commercial publicity, which does not identify the lawyer by name, to describe the availability and nature of its legal services.

Registration with State Supreme Court

Plans must file an annual report with the Client Security and Disciplinary Commission on or before July 1st of each year. See [Iowa Court Rule 34.14\(2\)](#).

34.14(2) The board shall approve a reporting form for legal services plans as contemplated by Iowa Rule of Professional Conduct 32:7.7(d)(4)(x). The legal service plan shall be required to report the terms of its plan, its schedule of benefits, its subscription charges, agreements with counsel, and financial results of its legal service activities. If it appears from such annual report or any other source that the organization is not operating in accordance with the rules of the supreme court and the Iowa Rules of Professional Conduct, such facts shall be reported by the board to the court for such action as the supreme court may deem appropriate.

INSURANCE DEPARTMENT POLICY

All legal expense insurance sales agents must successfully complete an examination on legal expense insurance and receive an [agent's license](#) before selling the product. However, they are exempt from insurance continuing education requirements.

GLSA REGULATION REPORTER STATE LISTING

IOWA

Links to Selected Text
State Statutes, Regulations, Attorney General Opinions, etc.
Lawyer Ethics Rules and Opinions
The link above opens an 89 page PDF, the page numbers below refer to the rule's location within the PDF.
Iowa Rules of Professional Conduct 32:1.18 Duties to Prospective Client Page 50 (amended 10/15/15)
Iowa Rules of Professional Conduct 32:5.4 Professional Independence of a Lawyer Page 69
Iowa Rules of Professional Conduct 32:7.1 Communications Concerning a Lawyer's Services Page 79
Iowa Rules of Professional Conduct 32:7.2 Advertising Page 79
Iowa Rules of Professional Conduct 32:7.3 Direct Contact with Prospective Clients Page 81
Iowa Board of Professional Ethics Opinion 05-05 – Referral Services: American Immigration Lawyers Association
Iowa Board of Professional Ethics Opinion 07-02 – Prospective Client Comment

GLSA REGULATION REPORTER STATE LISTING KANSAS

INSURANCE DEPARTMENT CONTACTS

State of Kansas Department of Insurance
Commissioner: **Ken Selzer**
420 SW 9th St.
Topeka, KS 66612

Phone: (785) 296-3071
Fax: (785) 296-2283
Internet: <http://www.ksinsurance.org/>

STATE BAR CONTACTS

Kansas Bar Association
Executive Director: **Jordan E. Yochim**
1200 SW Harrison St.
Topeka, KS 66612-1806

Phone: (785) 234-5696
Fax: (785) 234-3813
Internet: www.ksbar.org

REGULATORY SUMMARY

Special Statute:

Kansas Statutes Chapter [40-4201](#) et seq. regulates for-profit prepaid legal and dental service plans.

Anyone soliciting memberships for prepaid plans must be registered with the commissioner. All plans must also be registered with the commissioner and renew the certificate of registration annually.

Attorney General [Opinion No. 89-112](#):

The opinion, issued in 1989, deals with whether prepaid dental service plan is the type of service plan properly regulated under Article 42 of Chapter 40 of the Kansas Statutes. The opinion states that prepaid service plans are not typically considered within the business of insurance — even though they are similar to insurance products — because they do not involve the assumption or transfer of risk.

Nonetheless, the opinion states that the legislature enacted Article 42 to regulate prepaid legal and dental service plans and that such entities must comply with the statute unless specifically exempted.

LAWYER ETHICS RULES

The Kansas Supreme Court revised their ethics rules in 2007.

Kansas requires that lawyers disclose malpractice coverage. Rule 208A.

GLSA REGULATION REPORTER STATE LISTING KANSAS

Links to Selected Text
State Statutes, Regulations, Attorney General Opinions, etc.
Kansas Statutes Chapter 40, Article 42 : Prepaid Legal and Dental Service Plans
Office of the Attorney General – Opinion No. 89-112
Lawyer Ethics Rules and Opinions
Kansas Ethics Opinions are available on-line to bar members only.
Rule of Professional Conduct 1.18: Client-Lawyer Relationship: Duties to Prospective Client Added effective 3/1/14
Rule of Professional Conduct 5.4: Professional Independence of a Lawyer
Rule of Professional Conduct 7.1: Communications Concerning a Lawyer's Services
Rule of Professional Conduct 7.2: Advertising
Rule of Professional Conduct 7.3: Direct Contact with Prospective Clients Amended effective 3/1/14
Rules Relating to Discipline of Attorneys -- Rule 208A - Mandatory Disclosure of Professional Liability Insurance

GLSA REGULATION REPORTER STATE LISTING

KENTUCKY

STATE CONTACTS

Kentucky Department of Insurance
Commissioner: **H. Brian Maynard**
215 West Main Street
Frankfort, KY 40601
Phone: (502) 564-3630
(800) 595-6053
Fax: (502) 564-6090
Internet: <http://insurance.ky.gov/>

- [Agent Licensing](#) – 502/564-6004
- [Financial Standards and Examination](#) – 502/564-6082
- Legal – 502/564-6032
- [Property & Casualty](#) – 502/564-6046

Kentucky Attorney General – **Andy Beshear**
Office of the Attorney General
700 Capitol Avenue, Suite 118
Frankfort, Kentucky 40601
(502) 696-5300
<http://ag.ky.gov/>

STATE BAR CONTACTS

Kentucky Bar Association
Executive Director: **John D. Meyers**
Kentucky Bar Center
514 West Main Street
Frankfort, KY 40601-1883
Phone: (502) 564-3795
Fax: (502) 564-3225
Internet: www.kybar.org/

REGULATORY SUMMARY

Insurance Statutes:

Legal expense insurance is considered a form of miscellaneous casualty insurance in Kentucky. The Insurance Department has approved several filings by commercial insurers for prepaid legal expense insurance as a line of miscellaneous casualty.

INSURANCE DEPARTMENT POLICY

The Department has determined that it will not regulate what it defines as service contracts. The Attorney General's consumer protection division has jurisdiction over the actual plan, while the Office of Insurance retains jurisdiction over the insurance company backing the plan.

A legal access plan that involved no "transfer of risk" was permitted to operate as a non-insurance product. However, such plans must state: "*This is not a contract of insurance.*"

Any arrangement that results in indemnification of the subscriber as well as those arrangements combining both indemnity and service will fall under the regulatory authority of the Insurance Commissioner.

LAWYER ETHICS RULES

The Kentucky Supreme Court has replaced the state's Code of Professional Responsibility with new rules that are based on the ABA Model Rules. Some of the advertising rules were amended effective July 15, 2009.

The Kentucky Supreme Court Rules prohibit practicing attorneys from having "any financial interest whatsoever" in a prepaid legal services plan [Rule 3.477].

GLSA REGULATION REPORTER STATE LISTING KENTUCKY

Links to Selected Text
State Statutes, Regulations, Attorney General Opinions, Etc.
Lawyer Ethics <u>Rules</u> and <u>Opinions</u>
Supreme Court Rule 3.130 (1.18): Duties to Prospective Clients
Supreme Court Rule 3.130 (5.4): Professional Independence of a Lawyer
Supreme Court Rule 3.130 (7.01): Applicability
Supreme Court Rule 3.130 (7.02): Definitions
Supreme Court Rule 3.130 (7.03): Attorneys' Advertising Commission
Supreme Court Rule 3.130 (7.04): Advertising of Fees
Supreme Court Rule 3.130 (7.05): Filing of Advertisements
Supreme Court Rule 3.130 (7.06): Advisory Opinions
Supreme Court Rule 3.130 (7.07): Review of Filings
Supreme Court Rule 3.130 (7.08): Records of the Commission
Supreme Court Rule 3.130 (7.09): Direct Contact with Prospective Clients
Supreme Court Rule 3.130 (7.10): Waiver & Forfeiture of Fees for Prohibited Solicitation
Supreme Court Rule 3.130 (7.15): Communications Concerning a Lawyers Service
Supreme Court Rule 3.130 (7.20): Advertising
Supreme Court Rule 3.130 (7.25): Identification of Advertisements
Supreme Court Rule 3.475: Furnishing Legal Services Pursuant to a Pre-Paid Legal Services Plan Click on Rules of the Supreme Court, click plus sign on III-Practice of Law, scroll down to 3.475 -
Supreme Court Rule 3.477: Member's Financial Interest in Group or Plan Click on Rules of the Supreme Court, click plus sign on III-Practice of Law, scroll down to 3.477

GLSA REGULATION REPORTER STATE LISTING

LOUISIANA

INSURANCE DEPARTMENT CONTACTS

Louisiana Department of Insurance
Commissioner: **James J. Donelon**
1702 N. 3rd Street
Baton Rouge, LA 70802

Phone: (225) 342-0895
(800) 259-5300
Fax: (225) 342-3078
Internet: www.lidi.state.la.us/

STATE BAR CONTACTS

Louisiana State Bar Association
Executive Director: **Loretta Larsen**
601 St. Charles Avenue
New Orleans, LA 70130-3404

Phone: (504) 566-1600
(800) 421-5722
Fax: (504) 566-0930
Internet: www.lsba.org

REGULATORY SUMMARY

Insurance Statutes:

[Section 22:986](#) of Louisiana Revised Statutes exempts from specific regulation group or blanket

policies providing only benefits covering the cost of legal services and expenses, where the provisions — in the opinion of the Insurance Commissioner — are not less favorable to the insured than would be permitted by the standard provisions required for individual health and accident policies, or individual policies to cover legal services (Revised Statutes 22:986(B)).

Insurance Department Regulations:

The Louisiana Insurance Department has promulgated [Rule 7](#) entitled “Legal Expense Insurers.” The purpose of the rule is to provide guidelines applicable to legal expense insurers conducting business in the state.

LAWYER ETHICS RULES

The Rules of Professional Conduct Committee proposed changes to the [Advertising Rules](#). The Louisiana Supreme Court approved changes. They became effective on October 1, 2009.

GLSA REGULATION REPORTER STATE LISTING

LOUISIANA

Links to Selected Text
State Statutes, Regulations, Attorney General Opinions, Etc.
Louisiana Statutes - Title 22, Chapter 1, Part VI, Section 986 : Nonapplication to Certain Policies
Louisiana Department of Insurance - Louisiana Administrative Code, Title 37, Part XI, Chapter 19 Rule 7: Legal Expense Insurance (large PDF, Rule 7 starts on page 83)
Attorney General Opinion -- #07-0309
Lawyer Ethics Rules and Opinions
The rules are each listed separately, watch for pop-up blockers to see each rule
Rule of Professional Conduct 1.18: Duties to Prospective Client Amended eff. 1/13/15
Rule of Professional Conduct 5.4: Professional Independence of a Lawyer
How to File Advertisements
Rule of Professional Conduct 7.1: General
Rule of Professional Conduct 7.2: Communications Concerning a Lawyer's Services
Rule of Professional Conduct 7.4: Direct Contact with Prospective Clients
Rule of Professional Conduct 7.5: Advertisements in the Electronic Media other than Computer-Accessed Communications <i>[Enforcement of Rule 7.5(b)(2)(C) suspended by Order dated September 22, 2009]</i>
Rule of Professional Conduct 7.6: Computer-Accessed Communications <i>[Enforcement of Rule 7.6(d) suspended by Order dated September 22, 2009]</i>
Rule of Professional Conduct 7.7: Evaluation of Advertisements <i>[Enforcement of Rule 7.7 – only as it pertains to filing requirements for internet advertisements – suspended by Order dated September 22, 2009]</i>
Rule of Professional Conduct 7.8: Exemptions from the Filing and Review Requirement
Rule of Professional Conduct 7.9: Information about a Lawyer's Services Provided upon Request
Court's Order Amending the Rules, 6/22/11

By order of the Louisiana Supreme Court dated September 22, 2009:

“The enforcement of Rule 7.5(b)(2)(c), Rule 7.6(d), and Rule 7.7 (only as it pertains to filing requirements for internet advertisements) of the Article XVI, Rule 7 series of the Articles of Incorporation of the Louisiana State Bar Association be and are hereby suspended until further notice.”

GLSA REGULATION REPORTER STATE LISTING *LOUISIANA*

Selected Text: Attorney General Opinions

#07-0309

An attorney that meets the standards set forth in La. R.S. 9:3773.2(B)(5), specifically (i) being licensed to practice law in Louisiana; (ii) performing credit repair services ancillary to other legal services; and (iii) not being paid a fee by the client solely for providing services of a credit repair service organization, is exempt from the licensing requirements found in the Credit Repair Services Organization Act. (Hunter)

Op to Honorable William B. Daniel, IV, State Representative, District 68, Baton Rouge, LA
Date Released: January 3, 2008

GLSA REGULATION REPORTER STATE LISTING

MAINE

INSURANCE DEPARTMENT CONTACTS

Maine Dept of Professional & Financial Regulation
Bureau of Insurance
Superintendent of Insurance: **Eric C. Cioppia**
124 Northern Avenue
Gardiner, ME 04345

Phone: (207) 624-8475
(800) 300-5000 (in state)

Fax: (207) 624-8599

Internet:

http://www.state.me.us/pfr/ins/ins_index.htm

Licensing: (207) 624-8406
Property/Casualty: (207) 624-8422

STATE BAR CONTACTS

Maine State Bar Association
Executive Director: **Angela P. Weston**
124 State Street
Augusta, ME 04332-0788

Phone: (207) 622-7523

Fax: (207) 623-0083

Internet: <http://www.mainebar.org/>

REGULATORY SUMMARY

Insurance Statutes:

Maine Statutes [Title 24-A, Chapter 38](#), Sections 2881 et seq. regulate group legal services insurance. Plans that qualify as "insurance" products are regulated as a form of health insurance in Maine. Plans not deemed as "insurance" are not regulated.

Insurance Department Regulations:

The Bureau of Insurance adopted Rule 370 in 1987, establishing standards for the issuance of certificates of authority for group legal services insurance, including a formula for required reserves.

(<http://www.maine.gov/sos/cec/rules/02/chaps02.htm> scroll down to 02 031, Chapter 370)

LAWYER ETHICS RULES

New [rules](#), more closely following the ABA Model Rules have been adopted and become effective August 1, 2009 and were amended effective January 1, 2012.

GLSA REGULATION REPORTER STATE LISTING

MAINE

Links to Selected Text
State Statutes, Regulations, Attorney General Opinions, Etc.
Maine Revised Statutes -- Title 24-A, Chapter 38 : Group Legal Services Insurance
Maine Revised Statutes -- Title 24-A, Chapter 16, Subchapter I: Producers, Adjusters, Consultants and Agencies http://www.mainelegislature.org/legis/statutes/24-A/title24-Ach16sec0.html
Maine Insurance Regulations (http://www.maine.gov/sos/cec/rules/02/chaps02.htm scroll down to 02 031, Chapter 370)
Lawyer Ethics Rules and Opinions
Rules of Professional Conduct - Rule 1.18: Duties to Prospective Clients
Rules of Professional Conduct - Rule 5.4: Professional Independence of a Lawyer
Rules of Professional Conduct - Rule 7.1: Communications Concerning a Lawyer's Services
Rules of Professional Conduct - Rule 7.2: Advertising
Rules of Professional Conduct - Rule 7.2A: Aspirational Goals for Lawyer Advertising
Rules of Professional Conduct - Rule 7.3: Direct Contact with Prospective Clients
Ethics Opinion 174 – Legal Services Websites

GLSA REGULATION REPORTER STATE LISTING

MARYLAND

INSURANCE DEPARTMENT CONTACTS

Maryland Insurance Administration
Commissioner: **Al Redmer, Jr.**
200 St. Paul Place, Suite 2700
Baltimore MD 21202

Phone: (410) 468-2000
(800) 492-6116
Fax: (410) 468-2020
Internet: <http://www.mdinsurance.state.md.us/>

For Further Information Contact:

Producer Licensing: (410) 468-2006
Company Licensing: (410) 468-2152

ATTORNEY GENERAL CONTACTS

Consumer Protection Division
200 St. Paul Place, Suite 2700
Baltimore, MD 21202
(410) 576-6550
consumer@oag.state.md.us
(410) 528-8662 Consumer complaint hotline

Branch Offices:

Cumberland (301) 722-2000
Frederick (301) 600-1071
Hagerstown (301) 791-4780
Hughesville (301) 274-4620 or toll-free 1-866-366-8343
Salisbury (410)713-3620

STATE BAR CONTACTS

Maryland State Bar Association
Executive Director: **Paul V. Carlin**
Maryland Bar Center
520 West Fayette Street
Baltimore, MD 21201

Phone: (410) 685-7878
(800) 492-1964
Fax: (410)685-1016
Internet: www.msba.org/

Section of Delivery of Legal Services

REGULATORY SUMMARY

Special Statute:

Maryland Code Section 13-206 requires all “legal assistance organizations” to file an annual report – detailing activities and financial condition – with the Attorney General’s Consumer Protection Division.

The Consumer Protection Division announced that, as of November 25, 1991, it would accept the reports on a calendar year basis. Legal assistance organizations are required to file by December 1 of each year to be registered from January 1 through December 31 of the following year.

LAWYER ETHICS RULES

The Court modified the Rules of Professional Conduct following the ABA’s Ethics 2000 report.

FILING OR REGISTRATION REQUIREMENTS

See above

GLSA REGULATION REPORTER STATE LISTING

MARYLAND

Links to Selected Text
<u>State Statutes, Regulations, Attorney General Opinions, Etc.</u>
The link above takes you to the Maryland Code.
Maryland Code of Insurance § 8-301 – Definitions of Third Party Administrators Click on the code, scroll down to Insurance and click, then click on Title 8, subtitle 3, section 301 Definitions
Maryland Code of Commercial Law --§ 13-206 – Legal Assistance Organizations Click on the code, scroll down to Commercial Law and click, then click on Title 13, subtitle 2, section 206
Consumer Protection Division – <u>Regulations</u> http://www.dsd.state.md.us/comar/subtitle_chapters/02_Chapters.aspx#Subtitle01 (sometimes the link won't work, but the page is there.)
<u>Guide to Legal Aspects of Doing Business in Maryland</u>
<u>Lawyer Ethics Rules and Opinions</u>
The Ethics opinions are available only to members of the Maryland State Bar Association.
Rule of Professional Conduct 1.8: <u>Conflict of Interest: Prohibited Transactions</u>
Rule of Professional Conduct 1.18: <u>Duties to Prospective Clients</u>
Rule of Professional Conduct 5.4: <u>Professional Independence of a Lawyer</u>
Rule of Professional Conduct 7.1: <u>Communications Concerning a Lawyer's Services</u>
Rule of Professional Conduct 7.2: <u>Advertising</u>
Rule of Professional Conduct 7.3: <u>Direct Contact with Prospective Clients</u>

GLSA REGULATION REPORTER STATE LISTING MASSACHUSETTS

INSURANCE DEPARTMENT CONTACTS

Commonwealth of Massachusetts,
Office of Consumer Affairs & Business Regulation –
Division of Insurance
Commissioner: **Daniel R. Judson**
1000 Washington Street, Suite 810
Boston, MA 02118-6200

Phone: (617) 521-7794
Fax: (617) 521-7575
Internet: www.mass.gov/doi/

Producer Licensing: (617) 521-7794

STATE BAR CONTACTS

Massachusetts Bar Association
Executive Director: **Martin W. Healy**
20 West Street
Boston, MA 02111-1204

Phone: (617) 338-0500
Fax: (617) 338-0650
Internet: <http://www.massbar.org/>
This link may not work directly, but if you cut and paste the URL, it is correct.

REGULATORY SUMMARY

Special Statute:

[Chapter 176H](#) of the Massachusetts General Laws (“Legal Service Plans”) regulates most prepaid legal services in the state.

Prepaid legal services entities are required to file plan documents with both the Commissioner and the Advisory Committee on Prepaid Legal Services, which is appointed by the Governor. After the filing, the Advisory Committee shall advise the Commissioner, in writing, whether the plan and policies are in conformity with rules of the Supreme Judicial Court. The Commissioner may either approve the filing or hold a public hearing. If after thirty days no action has been taken on the plan or policy, it is deemed approved.

Insurance Department Regulations:

Administrative rules governing prepaid legal service plans are found at [211 C.M.R.](#) Section 90.

LAWYER ETHICS RULES

The Massachusetts Rules of Professional Conduct are based upon the ABA Model Rules.

FILING OR REGISTRATION REQUIREMENTS

See above, Chapter 176H of the Massachusetts General Laws.

GLSA REGULATION REPORTER STATE LISTING MASSACHUSETTS

Links to Selected Text
State Statutes, Regulations, Attorney General Opinions, Etc.
Massachusetts General Laws Annotated -- Part I, Title XXII, Chapter 176H: Legal Services Plan
Code of Massachusetts Regulations -- Title 211, Chapter 90.00: Legal Services Plans
Lawyer Ethics Rules and Opinions
Rules of the Supreme Judicial Court – Rule of Professional Conduct 5.4 – Professional Independence of a Lawyer
Rules of the Supreme Judicial Court – Rule of Professional Conduct 7.1 – Communications Concerning a Lawyer's Services
Rules of the Supreme Judicial Court – Rule of Professional Conduct 7.2 – Advertising
Rules of the Supreme Judicial Court – Rule of Professional Conduct 7.3 – Solicitation of Professional Employment
Massachusetts Bar Committee on Professional Ethics Opinions Opinion 2014-2 – Payment by lawyer to commercial marketing service Opinion 08-01 – Private business networking organization Opinion 07-01 – Unsolicited information from web inquiry Opinion 98-2 – Internet Opinion 97-2 – Two scenarios regarding solicitation

GLSA REGULATION REPORTER STATE LISTING

MICHIGAN

INSURANCE DEPARTMENT CONTACTS

Michigan Department of Insurance and Financial Services

Director: **Patrick M. McPharlin**

530 W. Allegan, 7th Floor
Lansing, MI 48933

Phone: (517) 373-0220
(877) 999-6442

Fax: (517) 335-4978

Internet: [Department of Insurance and Financial Services](#)

STATE BAR CONTACTS

State Bar of Michigan

Executive Director: **Janet K. Welch**

306 Townsend Street
Lansing, MI 48933-2083

Phone: (517) 346-6300
(800) 968-1442

Fax: (517) 482-6248

Internet: www.michbar.org

REGULATORY SUMMARY

Special Statute:

Michigan, through its insurance code, provides for the regulation of legal expense insurance [see Michigan Compiled Laws Sections [500.410](#), [500.618](#), [500.1206](#), [500.1214](#), [500.2700 - 500.2706](#)].

Insurance Department Policy & Opinion from the Office of the Attorney General:

In determining whether a plan constitutes the business of insurance and is therefore regulated under state insurance laws, the Insurance Bureau focuses on the elements of indemnity and fortuity (looking at the plan as a whole to determine whether its principle purpose is the provision of legal services or indemnification for legal expenses). In 1986, the Insurance Bureau found that a plan that provided basic legal services via telephone and mail did not constitute an “insurance” activity (see Insurance Bureau, Department of Licensing & Regulation, letter of September 19, 1986).

In contrast, Attorney General Opinion No. [6793 \(April 7, 1994\)](#) states that plans covering only basic legal services may be subject to regulation under state insurance laws – in situations where the provider attorneys “are not employees or under the control of the insurer.” Where the provider attorneys are employees of the insurer or are under the control of the insurer, “the plan would constitute an arrangement in the nature of a service contract” rather than an insurance contract.

United Transportation Union v. State Bar of MI,
401 US 576 (1971)

LAWYER ETHICS RULES

The Michigan Supreme Court has adopted rules that mirror the ABA Model Rules of Professional Conduct. Many of the Rules were updated in October 2010, effective January 1, 2011. None of the changes directly effect participation with group legal services plans.

GLSA REGULATION REPORTER STATE LISTING

MICHIGAN

Links to Selected Text
State Statutes, Regulations, Attorney General Opinions, Etc.
Michigan Insurance Code -- Chapter 500.410 – Capital and Surplus
Michigan Insurance Code -- Chapter 500.618 – Legal Expense Insurance (Defined)
Michigan Insurance Code -- Chapter 500.1201 , 500.1206 & 500.1214
Michigan Insurance Code -- Chapter 500.2700 – Legal Expense Insurance
Attorney General Opinion #6793 : Definition of Legal Expense Insurance
Lawyer Ethics Rules and Opinions
The link above opens a 91 page PDF with bookmarks.
Rule of Professional Conduct 5.4: Professional Independence of a Lawyer
Rule of Professional Conduct 6.3: Legal. Services. Organizations & Lawyer Referral Services
Rule of Professional Conduct 7.2: Advertising
Rule of Professional Conduct 7.3: Direct Contact with Prospective Clients
Informal Opinions of Ethics Committee RI-007 – Participation in Group Legal Services Plans RI-223 – Participation in Group Legal Services Plans RI-229 – Participation with a church group, offering legal services RI-340 – website listings RI-347 – Unbundling RI-348 – Limited Scope Representation RI-355 – Sharing space with nonlawyers, second office RI-365 – Referral Fee to Nonlawyer-owned for profit entity prohibited RI-366 – Coupon-type marketing of legal services unethical

GLSA REGULATION REPORTER STATE LISTING MINNESOTA

INSURANCE DEPARTMENT CONTACTS

State of Minnesota Department of Commerce
Commerce Commissioner: **Michael Rothman**
Insurance Deputy Commissioner: **Fred Andersen**
85-7th Place East, Suite 500
St. Paul, MN 55101-2198

Phone: (651) 297-7161
Fax: (651) 296-9434
Internet: [Minnesota Commerce Department Insurance:](http://mn.gov/commerce/industries/insurance/)
<http://mn.gov/commerce/industries/insurance/>

Market Assurance Division
651/296-2488
Financial Exams - Insurance
651/296-4976

STATE BAR CONTACTS

Minnesota State Bar Association
Executive Director: **Timothy Groshens**
600 Nicollet Mall – Suite #380
Minneapolis, MN 55402
Phone: (612) 333-1183; (800) 882-6722
Fax: (612) 333-4927
Internet: www.mnbar.org

REGULATORY SUMMARY

Special Statute:

LEGAL EXPENSE INSURANCE

(Minn. Stat. [60A.06](#), subd. 1, clause (15);
General Information) Legal expense insurance is
included as a permitted type of insurance.

BROKERS/PRODUCERS

Specific rules for brokers and producers
[http://mn.gov/commerce/insurance/producers-
adjusters/](http://mn.gov/commerce/insurance/producers-adjusters/)

LAWYER ETHICS RULES

Minnesota adopted a version of the ABA Model
Rules of Professional Conduct in 1985, amended in
2005.

GLSA REGULATION REPORTER STATE LISTING

MINNESOTA

Links to Selected Text
State Statutes, Regulations, Attorney General Opinions, Etc.
Minnesota Statutes (Insurance) Chapter 60A – General Insurance Powers (60A.06 subd. 1(15))
Lawyer Ethics Rules and Opinions The Rules are contained in one 120 page document, click above and scroll to the appropriate rule, the rules are bookmarked.
Rule of Professional Conduct 1.18: Duties to Prospective Clients Amended 2/24/15
Rule of Professional Conduct 5.4: Professional Independence of a Lawyer
Rule of Professional Conduct 7.1: Communications Concerning a Lawyer's Services Amended 2/24/15
Rule of Professional Conduct 7.2: Advertising Amended 2/24/15
Rule of Professional Conduct 7.3: Direct Contact with Prospective Clients Amended 2/24/15

GLSA REGULATION REPORTER STATE LISTING

MISSISSIPPI

INSURANCE DEPARTMENT CONTACTS

Mississippi Insurance Department
Commissioner: **Mike Chaney**
1001 Woolfolk State Office Building
501 N. West Street
Jackson, MS 39201

Phone: (601) 359-3569
Fax: (601) 359-2474
Internet: <http://www.mid.state.ms.us/>

STATE BAR CONTACTS

Mississippi Bar
Executive Director: **Larry Houchins**
643 North State Street
P.O. Box 2168
Jackson, MS 39225-2168

Phone: (601) 948-4471
Fax: (601) 355-8635
Internet: www.msbar.org/

REGULATORY SUMMARY

Special Statute:

Mississippi Code Title 83, Chapter 49 Sections [83-49-1 ff.](#) regulate prepaid legal services and

apply to all operators of commercial prepaid legal service plans, whether life or casualty insurers.

Annual reports must include, among other things, information regarding the sponsoring organization's financial condition and copies of advertisements. Reports must be filed no later than March 1. Licensees must be re-examined every five years. (2012 Amendment)

LAWYER ETHICS RULES

The Supreme Court of Mississippi adopted a version of the ABA Model Rules of Professional Conduct, effective in 1987. The Advertising Rules were amended effective September 1, 2003. The [rules](#) became effective September 1, 2004.

Registration with State Bar:

Plan sponsors are required to file a "specimen" copy of each subscription contract and a copy of the plan's underwriting rules with the Mississippi State Bar [see Mississippi Code Section 83-49-13 (6)].

GLSA REGULATION REPORTER STATE LISTING

MISSISSIPPI

Links to Selected Text
State Statutes, Regulations, Attorney General Opinions, Etc.
Mississippi Code -- Title 83, Chapter 49 : Legal Expense Insurance Click on the link above, open the Mississippi Code folder and enter 83-49 in the search box
Lawyer Ethics Rules and Opinions
The Rules open in a 135 page PDF. The table of contents has links to the rules within the document.
Rule of Professional Conduct 5.4: Professional Independence of a Lawyer
Rule of Professional Conduct 7.1: Communications Concerning a Lawyer's Services
Rule of Professional Conduct 7.2: Advertising
Rule of Professional Conduct 7.3: Direct Contact with Prospective Clients
Rule of Professional Conduct 7.4: Legal Service Information
Rule of Professional Conduct 7.5: Submission of Advertisements
Mississippi Bar Ethics Opinions Opinion 199 : Lawyer Can Participate [in Legal Services Plans] Under Certain Conditions Opinion 216 : In Person Contact with Prospective Clients Through Legal Service Provider Opinion 252 : Law Firm Web Pages

GLSA REGULATION REPORTER STATE LISTING

MISSOURI

INSURANCE DEPARTMENT CONTACTS

Missouri Department of Consumer Affairs –
Division of Insurance
Director of Insurance: **John M. Huff**
301 West High Street, Room 530
Jefferson City, MO 65101

Phone: (573) 751-4126
Fax: (573) 751-1165
Internet: www.insurance.mo.gov/

Licensing: (573) 751-3518
Ask MDI: askmdi@mail.state.mo.us

STATE BAR CONTACTS

The Missouri Bar
Executive Director: **Sebrina A. Barrett**
326 Monroe
P.O. Box 119
Jefferson City, MO 65102-0119

Phone: (573) 635-4128
Fax: (573) 635-2811
Internet: www.mobar.org

REGULATORY SUMMARY

Special Statute:

Missouri Code Section [379.901](#) provides that any person who “solicits” memberships on behalf of a prepaid legal services plan must be licensed as an insurance agent.

Although the legislation defines the term “prepaid legal services plan,” it does not provide for regulation by the Insurance Division. The plan must disclose in writing that the plan is not an insurance product and is not regulated by the department of insurance.

LAWYER ETHICS RULES

Some group legal services plans may be deemed to be lawyer referral plans by State Bar Legal Ethics Counsel. Those plans must be registered under Rule 4-9.1.

The Missouri Supreme Court amended the Rules of Professional Conduct, effective July 1, 2007. Some of the advertising rules were revised again in 2009.

GLSA REGULATION REPORTER STATE LISTING

MISSOURI

Links to Selected Text
State Statutes, Regulations, Attorney General Opinions, Etc.
Missouri Statutes -- Title XXIV, Chapter 379-Prepaid Legal Services Plans
Missouri Department of Insurance -- Bulletin 05-04: No-Action Request for Agents of Prepaid Legal Services Bulletin 08-15: Licensing Requirement for Solicitation of Prepaid Legal Services
Lawyer Ethics Rules and Opinions
Rule of Professional Conduct 4-1.18: Duties to Prospective Clients
Rule of Professional Conduct 4-5.4: Professional Independence of a Lawyer
Rule of Professional Conduct 4-7.1: Communications Concerning a Lawyers Services
Rule of Professional Conduct 4-7.2: Advertising
Rule of Professional Conduct 4-7.3: Direct Contact with Prospective Clients
Rule of Professional Conduct 4-9.1: Lawyer Referral and Information Services
Informal Advisory Ethics Opinions - Missouri Ethics Counsel Click on the link and enter the opinion number (without dashes) or search by key words 2000-0189 – Information about legal services, advertising 2000-0130 – lawyer referral fees 98-0022 – pre-paid participation/unregistered referral service 97-0218 – cooperative marketing program 97-0049 – referral fees 96-0134 – cooperative advertising program 96-0035 – advertising, geographic exclusivity 95-0210 – 800 number referral 95-0043 – referral fees, not for profit 94-0126 – MDP, UPL, legal services 93-0095 – refers to ABA opinion on legal plans (87-355)

GLSA REGULATION REPORTER STATE LISTING MONTANA

INSURANCE DEPARTMENT CONTACTS

State Auditor's Office – Insurance Division
Insurance Commissioner: **Monica Lindeen**
840 Helena Avenue
Helena, MT 59601

Phone: (406) 444-3246
Fax: (406) 444-2040
Internet: <http://www.csi.mt.gov/>

STATE BAR CONTACTS

State Bar of Montana
Executive Director: **Chris Manos**
The Power Block
7 West 6th Avenue
Suite 2B
P.O. Box 577
Helena, MT 59624

Phone: (406) 442-7660
Fax: (406) 442-7763
Internet: www.montanabar.org

REGULATORY SUMMARY

Insurance Statutes:

Prepaid legal services are defined in Montana Code [Section 33-1-215](#). Companies that offer prepaid legal services must be licensed as casualty insurance companies.

Requirements for licensing can be found throughout the state insurance code [See, Montana Code, [Title 33, Chapter 23](#)].

Prepaid legal service plans may be sold in Montana through agents licensed to sell casualty insurance. The Insurance Commissioner requires each applicant for an insurance agent's license to pass a written examination to signify his/her competence to act as an agent.

LAWYER ETHICS RULES

The state Supreme Court has approved ethics rules based on the ABA Model Rules of Professional Conduct. The advertising rules were [amended](#) in July 2010.

Rule 7.2 (b)(2) permits lawyers to pay the usual charges of not-for-profit lawyer referral service or other legal service organizations.

GLSA REGULATION REPORTER STATE LISTING MONTANA

Links to Selected Text
State Statutes, Regulations, Attorney General Opinions, Etc.
Montana Code -- 33-1-215: Prepaid Legal Insurance
Proposed Legislation 2015 to take prepaid legal out of insurance regulations. Tabled in Committee
Lawyer Ethics Rules and Opinions
The Rules are contained in a 16 page PDF. The page numbers below refer to the rule's location within the document – MUST BE READ WITH ORDER THAT PRECEDES THE RULES.
Rule of Professional Conduct 1.20: Duties to Prospective Client Page 10
Rule of Professional Conduct 5.4: Professional Independence of a Lawyer Page 13
Rule of Professional Conduct 7.1: Communications Concerning a Lawyer's Services Page 14,
Rule of Professional Conduct 7.2: Advertising Page 14,
Rule of Professional Conduct 7.3: Direct Contact with Prospective Clients Page 15
Montana State Bar Ethics Committee <ul style="list-style-type: none"> Ethics Opinion 011114 – prepaid legal services marketing Ethics Opinion 030716 – regional lawyer referral Ethics Opinion 101216 – unbundled legal services

GLSA REGULATION REPORTER STATE LISTING

NEBRASKA

INSURANCE DEPARTMENT CONTACTS

Nebraska Department of Insurance
Director: **Bruce R. Ramge**
Terminal Building
941 "O" Street – Suite 400
Lincoln, NE 68508-3639

Phone: (402) 471-2201
Fax: (402) 471-4610
Internet: <http://www.doi.nebraska.gov/>

STATE BAR CONTACTS

Nebraska State Bar Association
Executive Director: **Liz Neeley**
635 S. 14th Street
Lincoln, NE 68508

Phone: (402) 475-7091
Fax: (402) 475-7098
Internet: <http://www.nebar.com/>

REGULATORY SUMMARY

Special Statute:

Nebraska's law follows the provisions of the NAIC Model Act and is designed to provide for the regulation of all prepaid legal service plans [see [Nebraska Revised Statutes Section 44-3301 ff.](#)]. Under the statute, legal expense insurance is defined as follows:

"... the assumption of a contractual obligation to provide specified legal services or to reimburse for specified legal expenses, in consideration of a specified payment for an interval of time, regardless of whether the payment is made by the beneficiaries individually or by a third person for them, in such a manner that the total cost incurred by assuming the obligation is to be spread directly or indirectly among a group of persons..." (44-3302)

The statute does not apply to plans providing only consultation and advice in connection with or in combination with referral services (§44-3303(2)).

The statute prohibits an insurer from contracting to practice law itself and from controlling the professional judgment of provider attorneys (§44-3309).

Annual statements showing premiums received in the preceding calendar year must be filed by March 1 (§44-3324). The Director of Insurance may also require the filing of additional reports (§44-3326).

Effective February 1, 2008, the Department will no longer require an applicant to take a test for a prepaid legal limited lines license. The Department will continue to require each applicant to complete an application and submit the appropriate licensing fee.

Producer licensing guidelines and information are available at <http://www.doi.nebraska.gov/license/index.html>

LAWYER ETHICS RULES

Effective September 1, 2005, Nebraska revised their Rules. The new Rules of Professional Conduct parallel the ABA Model Rules.

GLSA REGULATION REPORTER STATE LISTING

NEBRASKA

Links to Selected Text
State Statutes, Regulations, Attorney General Opinions, Etc.
Nebraska Revised Statutes -- Chapter 44, Article 33 -Legal Services Insurance Corporations 44-3301 click for each article through 44-3327
Lawyer Ethics Rules and Opinions
Rules of Professional Conduct 3-501.18: Duties to Prospective Client
Rules of Professional Conduct 3-505.4: Professional Independence of a Lawyer
Rules of Professional Conduct 3-507.1: Communications Concerning a Lawyer's Services
Rules of Professional Conduct 3-507.2: Advertising
Rules of Professional Conduct 3-507.3: Direct Contact with Prospective Clients
Nebraska Supreme Court Advisory Committee -- Various Ethics Opinions (pdf) <ul style="list-style-type: none">Opinion 86-2 – participation with group legal services planOpinion 87-2 – for profit lawyer referralOpinion 89-3 – for profit lawyer referralOpinion 95-3 – for profit lawyer referral and on-lineOpinion 06-10 – estate planning plan run by non-lawyerOpinion 07-01 – on-line marketing and referralOpinion 07-05 – internet lawyer directoryOpinion 12-03 – Groupon advertising and fee sharingOpinion 14-01 – Participation with Bar Association lawyer referral

GLSA REGULATION REPORTER STATE LISTING

NEVADA

INSURANCE DEPARTMENT CONTACTS

Nevada Department of Business & Industry –
Division of Insurance Acting Commissioner:

Amy L. Parks

1818 College Parkway
Carson City, NV 89701-5491

Phone: (775) 687-4270

Fax: (775) 687-3937

Internet: <http://doi.state.nv.us/>

Las Vegas Office:

2501 E. Sahara Avenue – Suite 302

Las Vegas, NV 89104

Phone: (702) 486-4009

Fax: (702) 486-4007

STATE BAR CONTACTS

State Bar of Nevada

Executive Director: **Kimberly Farmer**

3100 West Charleston Boulevard

Las Vegas, NV 89102

Phone: (702) 382-2200; (800) 254-2797

Fax: (702) 385-2878

Internet: www.nvbar.org

REGULATORY SUMMARY

Insurance Statute:

Under the state insurance code only casualty companies are permitted to offer legal expense insurance.

Insurance Department Policy:

Simple access plans are not considered insurance and are not regulated by the Division of Insurance.

Access plans are defined as those that, for a prepaid fee, make available attorneys for consultation, letters or phone calls, and referrals to attorneys who are willing to provide legal services at discounted rates. Any plan that offers benefits other than those described in the preceding sentence must be offered through an admitted casualty insurer. ([NRS 681A.020](#))

LAWYER ETHICS RULES

The Nevada rules are based on the ABA Model Rules of Professional Conduct.

Rule 42.5 addresses lawyer participation in prepaid legal service plans. The rule provides, among other things, that a lawyer may participate with a nonprofit organization that furnishes, recommends or pays for legal services to its members or beneficiaries. The rule's language implies that lawyers may not cooperate with for-profit plans. The rule also states that the Nevada Supreme Court must certify organizations created or operated solely for the purpose of rendering legal services. The court can refuse to certify a plan if it believes that the plan may enable participating attorneys to violate the rules of professional ethics.

The Court completed their review and approval of the Rules of Professional Conduct re-numbered to conform with the ABA Model Rules.

There are new rules for lawyer advertising. Lawyers are encouraged to review the [Advertising Committee Rules](#) and the [Interpretive Guidelines](#).

GLSA REGULATION REPORTER STATE LISTING NEVADA

Links to Selected Text
State Statutes, Regulations, Attorney General Opinions, Etc.
Lawyer Ethics Rules and Opinions
The rules load in one document, scroll down for the various rules.
Supreme Court Rule 42.5 : Group Legal Services Activities Scroll down to Rule 42.5
Rule of Professional Conduct 1.18: Duties to Prospective Clients
Rule of Professional Conduct 5.4: Professional Independence of a Lawyer
Rule of Professional Conduct 7.1: Communications Concerning a Lawyer's Services
Rule of Professional Conduct 7.2: Advertising
Rule of Professional Conduct 7.2A: Advertising Filing Requirements
Rule of Professional Conduct 7.2B: Volunteer Advisory Committees; Pre-Dissemination Review
Rule of Professional Conduct 7.3: Communications with Prospective Clients
Rule of Professional Conduct 7.5A: Registration of Multijurisdictional Firms
State Bar of Nevada Standing Committee on Ethics and Professional Responsibility Formal Opinion No. 32 – March 25, 2005 – Internet communication and atty/client relationships
An Assessment of Alternative Strategies for Increasing Access to Legal Services 1980 Jeffrey W. Stempel, University of Nevada, Las Vegas – William S. Boyd School of Law

GLSA REGULATION REPORTER STATE LISTING

NEW HAMPSHIRE

INSURANCE DEPARTMENT CONTACTS

New Hampshire Department of Insurance
Commissioner: **Roger A. Sevigny**
21 South Fruit Street, Suite 14
Concord, NH 03301

Phone: (603) 271-2261
Fax: (603) 271-1406
Internet: www.state.nh.us/insurance/

STATE BAR CONTACTS

New Hampshire Bar Association
Executive Director: **Jeannine L. McCoy**
112 Pleasant Street
Concord, NH 03301

Phone: (603) 224-6942
Fax: (603) 224-2910
Internet: www.nhbar.org

REGULATORY SUMMARY

Insurance Statutes:

Prepaid legal service contracts are covered under New Hampshire Revised Statutes, New [Chapter 415-C: \(1\)\(III\)\(b\)\(2\)](#) which applies to prepaid legal service contracts offered by licensed insurance companies, as well as other "Consumer Guaranty Contracts".

Each provider of prepaid legal service contracts must register with the Commissioner of Insurance and pay a registration fee.

LAWYER ETHICS RULES

In 2008, [New Hampshire](#) revised its rules based on the ABA Model Rules of Professional Conduct.

GLSA REGULATION REPORTER STATE LISTING

NEW HAMPSHIRE

Links to Selected Text
State Statutes, Regulations, Attorney General Opinions, Etc.
New Hampshire Statutes -- Title XXXVII, Chapter 415-C:(1)(III)(b)(2) Consumer Guaranty Contracts
Lawyer Ethics Rules and Opinions
Rule of Professional Conduct 1.18: Duties to Prospective Client
Rule of Professional Conduct 5.4: Professional Independence of a Lawyer
Rule of Professional Conduct 7.1: Communications Concerning a Lawyer's Services
Rule of Professional Conduct 7.2: Advertising
Rule of Professional Conduct 7.3: Direct Contact with Prospective Clients
Ethics Opinion 2005-06/6 – business networking 2013-14/8 – discounted legal services through coupons or daily deals

GLSA REGULATION REPORTER STATE LISTING

NEW JERSEY

INSURANCE DEPARTMENT CONTACTS

New Jersey Department of Banking & Insurance
Acting Commissioner: **Richard J. Badolato**
20 West State Street
P.O. Box 325
Trenton, NJ 08625-0325

Phone: (609) 292-5360
Fax: (609) 292-3144
Internet: www.state.nj.us/dobi/

Department Contacts:
Financial Examination: (609) 292-5350
Life & Health: (609) 292-5427
Property & Liability: (609) 984-7310

STATE BAR CONTACTS

New Jersey State Bar Association
Executive Director: **Angela C. Scheck**
New Jersey Law Center
One Constitution Square
New Brunswick, NJ 08901-1520

Phone: (732) 249-5000
Fax: (732) 249-2815
Internet: <http://www.njsba.com>

REGULATORY SUMMARY

Special Statute:

The New Jersey Legal Services Insurance Act, [NJ Statutes 17:46C](#), allows for licensed commercial insurers and others to offer prepaid legal service plans.

The statute excludes from the definition of regulated legal services insurance “plans providing no benefits other than a limited amount of consultation and advice on simple matters either alone or in combination with referral services or the promise of fee discounts for other matters.

The statute requires insurers to file annual reports with financial and other information.

Insurance Department Regulation:

The Insurance Commissioner adopted rule [NJAC 11:12](#) to regulate prepaid legal services. It provides a comprehensive regulatory framework for insurers who offer legal insurance.

LAWYER ETHICS RULES

[RPC 7.3\(e\)\(4\)\(vii\)](#) requires registration with the state supreme court.

[The Rules of Professional Conduct](#) have been updated.

GLSA REGULATION REPORTER STATE LISTING

NEW JERSEY

Links to Selected Text
State Statutes, Regulations, Attorney General Opinions, Etc.
For the New Jersey Administrative Code, click on Code, scroll to Title 11, scroll to Chapter number to find code language.
New Jersey Statutes -- Title 17, Subtitle 3, Part 7B, Chapter 46C: Legal Services Insurance
New Jersey Administrative Code -- Title 11, Chapter 12, Subchapter 1: Insurers Authorized to Transact the Business of Legal Insurance
New Jersey Administrative Code -- Title 11, Chapter 17, Subchapter 2: Licensing Rules
New Jersey Administrative Code – Title 11, Chapter 4. Actuarial Services, Subchapter 40. Life/Health/Annuity Forms
Lawyer Ethics Rules and Opinions
Rules open in a 51 page PDF
Rule of Professional Conduct 1.18: Prospective Client
Rule of Professional Conduct 5.4: Professional Independence of a Lawyer
Rule of Professional Conduct 7.1: Communications Concerning a Lawyer's Services
Rule of Professional Conduct 7.2: Advertising
Rule of Professional Conduct 7.3: Personal Contact with Prospective Clients
Rule of Professional Conduct 7.5: Firm Names and Letterheads
Opinions: Opinion 43 – Internet “client matching” Opinion 38 - 1-800 Lawyers referral service prohibited Opinion 36 – Prohibited internet advertising Opinion 43 – Internet Advertising, Misleading Content, and Impermissible Referral Services

GLSA REGULATION REPORTER STATE LISTING

NEW MEXICO

INSURANCE DEPARTMENT CONTACTS

New Mexico Department of Insurance
Superintendent of Insurance: **John Franchini**
P.E.R.A. Building
1120 Paseo de Peralta
P.O. Box 1269
Santa Fe, NM 87504-1269

Phone: (505) 827-4601
Fax: (505) 827-4734
Internet: <http://www.osi.state.nm.us/>

STATE BAR CONTACTS

State Bar of New Mexico
Executive Director: **Joe Conte**
5121 Masthead, NE
Albuquerque, NM 87109

Phone: (505) 797-6000
Fax: (505) 828-3765
Internet: www.nmbar.org

REGULATORY SUMMARY

Insurance Statutes:

Prepaid legal services are regulated under the section of the state insurance code covering

miscellaneous casualty insurance [New Mexico [Revised Statutes](#) Section 59A-7-6(18)].

Click on NMSA ,” then to Chapter 59A, Article 7.

Insurance Department Policy:

In determining whether a plan constitutes insurance, the Department of Insurance looks to the element of indemnification. If the plan does not provide for indemnification, then it will not be regulated as an insurance product.

LAWYER ETHICS RULES

The New Mexico rules are based on the ABA Model Rules of Professional Conduct.

The Supreme Court amended the Rules effective November 3, 2008.

GLSA REGULATION REPORTER STATE LISTING

NEW MEXICO

Links to Selected Text
State Statutes, Regulations, Attorney General Opinions, Etc.
Lawyer Ethics <u>Rules</u> and <u>Opinions</u>
Click on Rules, click on NMRA to open then scroll down to Rules of Professional Conduct
Rule of Professional Conduct 16-118: Duties to Potential Clients
Rule of Professional Conduct 16-504: Professional Independence of a Lawyer
Rule of Professional Conduct 16-701: Communications Concerning a Lawyer's Services
Rule of Professional Conduct 16-702: Advertising and Solicitation
Rule of Professional Conduct 16-703: Direct In-Person or Telephone Contact with Prospective Clients
Advisory Opinion Committee
Click on the link and scroll to the opinion summary with link to full opinions
Opinion 1984-12 – advertising prepaid plans in law office
Opinion 1987-8 – attorney may provide information about prepaid plans to the public
Opinion 1993-1 – permitted and prohibited referral mechanisms
Opinion 2009-1 – law firm entity forms permitted

GLSA REGULATION REPORTER STATE LISTING

NEW YORK

INSURANCE DEPARTMENT CONTACTS

New York State Department of Financial Services
Acting Superintendent: **Maria T. Vullo**
25 Beaver Street
New York, NY 10004

Phone: (212) 480-6400
Fax: (212) 480-6282
Licensing: (518) 474-6630
Internet: [Department of Financial Services](#)

STATE BAR CONTACTS

New York State Bar Association
Executive Director: **David R. Watson**
One Elk Street
Albany, NY 12207

Phone: (518) 463-3200
Fax: (518) 487-5564
Internet: www.nysba.org/
Licensing: (518) 747-6630

REGULATORY SUMMARY

Chapter 65 of the Laws of 1998 added, as of April 1, 1999, insurance known as “legal services insurance.” (Paragraph 29 of [Section 1113\(a\)](#) of the New York Insurance Law). Paragraph 29 defines legal services insurance as that which provides legal services or reimbursement of the cost of legal services. Chapter 65 also made substantive changes to Section 1116 of the Insurance Law (retitled as “Prepaid Legal Services Plans and Legal Services Insurance”).

Special Statute:

[Section 1116](#) of the New York Insurance Law, originally an experimental law which authorized the offering of prepaid legal services plans, has been

extended on numerous occasions. The law authorizes the Superintendent of Insurance to promulgate regulations regarding prepaid legal services plans, including legal services insurance provided in connection with such plans, and legal services insurance made part of a liability insurance policy.

Additional Legislative Measures:

[Section 495](#) of New York’s Judiciary Law forbids corporations and voluntary associations from practicing law or appearing as an attorney before state courts and other judicial bodies. The statute, however, exempts organizations offering prepaid legal services.

Under [Section 496](#) organizations that offer prepaid legal services must file a statement identifying the following information:

1. The nature and purpose of the organization;
2. The composition of the organization’s governing body;
3. The type(s) of legal services offered; and
4. The names and addresses of lawyers employed by the organization or with whom commitments have been made.

This statement must be filed with the Appellate Division department in which the organization’s principal office is located and must be updated on or before July 1.

LAWYER ETHICS RULES

New York has rules based on the ABA Model Rules of Professional Conduct. The rules are effective April 1, 2009, with amendments through December 2012.

GLSA REGULATION REPORTER STATE LISTING NEW YORK

Links to Selected Text
State Statutes, Regulations, Attorney General Opinions, Etc.
Chapter 28, Section 1113: Kinds of Insurance Authorized Scroll down to INS, then Chapter 11
Chapter 28, Section 1116: Prepaid Legal Services Plans & Legal Services Ins. http://www.dfs.ny.gov/insurance/acrobat/1116.pdf
Insurance Department Regulations 11 NY ADC 261 Prepaid Legal Services Plans 11 NY ADC 262 Legal Services Insurance 5 Year Rulemaking Review – begins at page 10
Office of General Counsel Opinions - OGC Op No 09-08-07 (August 4, 2009) – whether a particular plan fits the regulations August 31, 2007 – whether a lawyer may participate with a particular plan 00-02-10 – whether a licensed agent may sell prepaid legal 00-02-12 – type of license necessary to sell prepaid legal General Counsel Opinion 6-1-99 (#2) June 1, 1999 not available electronically General Counsel Opinion 3-14-01 – nonresident licensing requirements to sell prepaid legal
Lawyer <u>Ethics Rules and Opinions</u>
The link leads to a 210 page PDF. The page numbers below refer to the rule's location within the document.
Consolidated Laws of New York , select JUD for judiciary, go to Article 15 to select the two statutes. Chapter 30, Article 15: Sec. 495 Corps & Voluntary Assns Not to Practice Law Sec. 496 Statement to Be Filed
Rules of Professional Conduct: 1.18: Duties to Prospective Clients Page 99
Rules of Professional Conduct: 5.4: Professional Independence of A Lawyer Page 147
Rules of Professional Conduct: 7.1: Advertising Page 167
Rules of Professional Conduct: 7.2: Payment for Referrals Page 175
Rules of Professional Conduct: 7.3: Solicitation and Recommendation of Professional Employment Page 179

GLSA REGULATION REPORTER STATE LISTING NORTH CAROLINA

INSURANCE DEPARTMENT CONTACTS

North Carolina Department of Insurance
Commissioner: **Wayne Goodwin**
1202 Mail Service Center
Raleigh, NC 27699-1202

Office: Dobbs Building
430 N. Salisbury St.
Raleigh, NC 27603-5926

Phone: (919) 733-2032
Fax: (919) 733-6495
Internet: <http://www.ncdoi.com/>

STATE BAR CONTACTS

North Carolina State Bar
Executive Director: **L. Thomas Lunsford, II**
208 Fayetteville Street Mall
P.O. Box 25908
Raleigh, North Carolina 27611-5908
Phone: (919) 828-4620
Fax: (919) 821-9168
Internet: <http://www.ncbar.com/>

Prepaid Legal Services Plans
<http://www.ncbar.com/programs/prepaid.asp>

REGULATORY SUMMARY

Insurance Statutes:

Insurance statutes in North Carolina require that all plans register with the State Bar Council.

Anti-trust litigation. See Complaint [here](#). A Consent Judgment was entered on October 22, 2015. See consent judgment [here](#).

Insurance Department Policy

The Department does not consider prepaid legal plans that provide access to legal services

and directly compensate the providers of those services to be in the business of insurance.

However, the Department of Insurance has historically taken the position that prepaid legal plans that reimburse their enrollees for legal expenses, whether from attorneys in a network or from attorneys of the enrollees' choosing, are in the business of insurance and are subject to all requirements of property and liability insurance companies in the General Statutes. Therefore, a Property & Liability license would be required.

Other Statutes:

A plan which meets the definition of a "discount buying club" under the North Carolina statutes must comply with the provisions of North Carolina General Statute Section [66-131](#) et seq.

ETHICS RULES

The registration requirement was amended in 2004. A duly authorized committee of the State Bar reviews each plan to determine whether it fits the definition of a prepaid legal services plan under [Rule .0310](#). Go to Subchapter E –Regulations For Organizations Practicing Law, click on Section .0300 Rules Concerning Prepaid Legal Services Plans. The initial registration form and rules can be found [here](#).

North Carolina's rules were substantially revised in 2003. Registration procedures and Registration were revised in 2010. See Subchapter E, Section .0300, Rule .0304 and Rule .0305

GLSA REGULATION REPORTER STATE LISTING NORTH CAROLINA

Links to Selected Text
State Statutes, Regulations, Attorney General Opinions, Etc.
North Carolina Statutes Chapter 58 Insurance Chapter 66-131 – Discount Buying Club
Rules Concerning Prepaid Legal Services -- Plans and Registration Forms Go to Subchapter E –Regulations For Organizations Practicing Law, click on Section .0300 Rules Concerning Prepaid Legal Services Plans. Other information is found here .
Lawyer <u>Ethics Rules</u> and Opinions
Click on the link above and use the drop-down menu to find the rules, relevant ethics opinions are listed following each rule
Rule of Professional Conduct 1.18: Duty to Prospective Client (amended 10/2/2014) 2011 Formal Ethics Opinions 8 and 10 deal with websites
Rule of Professional Conduct 5.4: Professional Independence of a Lawyer (amended 3/1/2003) 2010 Formal Ethics Opinion 4 deals with payments and fees to non-lawyers
Rule of Professional Conduct 7.1: Communications Concerning a Lawyer’s Services (amended 10/2/2014) 2011 Formal Ethics Opinions 8 and 10 deal with websites and discounts
Rule of Professional Conduct 7.2: Advertising (amended 10/2/2014) 2010 Formal Ethics Opinion 4 deals with barter exchanges
Rule of Professional Conduct 7.3: Direct Contact with Potential Clients (amended 8/25/2011) 2011 Formal Ethics Opinions 8 and 10 deal with websites
2012 Formal Ethics Opinion 8 Lawyer’s Acceptance of Recommendations on Professional Networking Website
2012 Formal Ethics Opinion 10 Participation as a “Network” Lawyer for Company Providing Litigation or Administrative Support Services
2013 Formal Ethics Opinion 10 Participation in Online Group Legal Advertising Using Territorial Exclusivity

GLSA REGULATION REPORTER STATE LISTING NORTH DAKOTA

INSURANCE DEPARTMENT CONTACTS

North Dakota Department of Insurance
Commissioner: **Adam Hamm**
State Capitol, Fifth Floor
600 E. Boulevard
Bismarck, ND 58505-0320

Phone: (701) 328-2440
Fax: (701) 328-4880
Internet: www.state.nd.us/ndins/

STATE BAR CONTACTS

State Bar Association of North Dakota
Executive Director: **Tony J. Weiler**
1661 Capitol Way, Suite 104LL
Bismarck, North Dakota 58501

Phone: (701) 255-1404
Fax: (701) 224-1621
Internet: <http://sband.org/>

REGULATORY SUMMARY

Special Statute:

[North Dakota Code Chapter 26.1-19](#) regulates prepaid legal service plans that are not operated by insurance companies. Plans providing only consultation and advice through an attorney connected to or in combination with referral

services are exempt from regulation under the statute.

The Commissioner of Insurance is required to transmit copies of the application for a certificate of authority, as well as accompanying documents, to the State Bar Association of North Dakota.

Insurance Statute:

Organizations offering legal expense insurance, as defined in [North Dakota Code Sections 26.1-43-01 thru 26.1-43-03](#), are regulated as legal expense insurance carriers.

LAWYER ETHICS RULES

The [North Dakota Supreme Court](#) adopted a version of the ABA Model Rules of Professional Conduct. Rule 7.1 of the advertising rules was amended in October 2010.

Filing Requirements:

Plans must file annual reports containing information on their financial condition.

GLSA REGULATION REPORTER STATE LISTING NORTH DAKOTA

Links to Selected Text
State Statutes, Regulations, Attorney General Opinions, Etc.
North Dakota Century Code 26.1-19 -- Prepaid Legal Services
North Dakota Century Code 26.1-46 -- Legal Expense Insurance
North Dakota Insurance Regulations See 45-02-02-04.4d and 45-02-04-09.4 for regulations regarding producers licensed for legal services insurance
Lawyer <u>Ethics Rules</u> and <u>Opinions</u> The Ethics Opinions are listed by the applicable rule on the North Dakota Bar's website, click above.
Rule of Professional Conduct 1.18: Duties to Potential Clients
Rule of Professional Conduct 5.4: Professional Independence of a Lawyer
Rule of Professional Conduct 7.1: Communications Concerning the Services of a Lawyer or Persons Professionally Associated with the Lawyer
Rule of Professional Conduct 7.2: Firm Names and Letterheads Ethics Opinion 11-06 Whether a law firm may enter into an agreement with an out-of-state law firm that manages a prepaid legal services referral service.
Rule of Professional Conduct 7.3: Contact with Prospective Clients

GLSA REGULATION REPORTER STATE LISTING

OHIO

INSURANCE DEPARTMENT CONTACTS

The Ohio Department of Insurance
Director: **Mary Taylor (Lt. Governor)**
2100 Stella Court
Columbus, OH 43215-1067

Phone: (614) 644-2658
Fax: (614) 644-3743
Internet: <http://www.insurance.ohio.gov>

Licensing: (614) 644-2665
Property & Casualty: (614) 644-2635

STATE BAR CONTACTS

Ohio State Bar Association
Executive Director: **Mary Amos Augsburger**
1700 Lake Shore Drive
Columbus, OH 43204

Phone: (614) 487-2050
Fax: (614) 487-1008
Internet: www.ohiobar.org

STATE SUPREME COURT

Supreme Court of Ohio
30 East Broad Street
Columbus, OH 43215-3431

Phone: (614) 466-3456
Internet: <http://www.sconet.state.oh.us/>

REGULATORY SUMMARY

Insurance Department Policy:

Ohio does not have a specific statute addressing prepaid legal services.

LAWYER ETHICS RULES

The Ohio Supreme Court approved [new rules](#) based on the ABA Model Rules of Professional Responsibility.

FILING REQUIREMENTS:

Legal Services Plans must file a report with the Supreme Court of Ohio on or before March 1st of each year. [[Supreme Court Rules of the Government of the Bar of Ohio XVI](#)]

GLSA REGULATION REPORTER STATE LISTING

OHIO

Links to Selected Text
State Statutes, Regulations, Attorney General Opinions, Etc.
Lawyer Ethics Rules and Opinions
The Supreme Court link leads to a 208 page document containing all the rules, the document's Table of Contents will connect you to the rule via an internal link.
Rule of Professional Responsibility 1.18: Duties to Prospective Clients
Rule of Professional Responsibility 5.4: Professional Independence of a Lawyer
Rule of Professional Responsibility 7.1: Communications Concerning a Lawyer's Services
Rule of Professional Responsibility 7.2: Advertising and Recommendation of Professional Employment
Rule of Professional Responsibility 7.3: Direct Contact With Prospective Clients
Supreme Court Rules for the Government of the Bar of Ohio
Rule XVI: Lawyer Referral and Information Services; Legal Services Plans
Supreme Court Ethics Opinions Click on the link and select the appropriate year in the box. 2000-5 superseded by new rules 2001-2 superseded by new rules 2002-11 superseded by new rules 2004-1 superseded by new rules 2005-6 superseded by new rules 2005-9 superseded by new rules 2007-3 – accept credit cards 2007-5 – advertising and solicitation 2010-7 – social media for judges 2011-2 – national debt relief firm cannot operate without local counsel 2015-2 – Direct In-person Solicitation of Prospective Clients at Seminars

GLSA REGULATION REPORTER STATE LISTING OKLAHOMA

INSURANCE DEPARTMENT CONTACTS

Oklahoma Department of Insurance
Commissioner: **John D. Doak**
2401 N.W. 23rd, Suite 28
P.O. Box 53408
Oklahoma City, OK 73152-3408

Phone: (405) 521-2828;
(800) 522-0071 (In-State)
Fax: (405) 521-6652
Internet: <https://www.ok.gov/oid/>

Agent Licensing: (405) 521-3916
Property & Casualty: (405) 521-3681

Tulsa Office:
3105 East Skelly Drive – Suite 305
Tulsa, OK 74127
Phone: (918) 747-7700
Fax: (918) 747-7720

STATE BAR CONTACTS

Oklahoma Bar Association
Executive Director: **John Morris Williams**
1901 North Lincoln Boulevard
P.O. Box 53036
Oklahoma City, OK 73152-3036

Phone: (405) 416-7000
Fax: (405) 416-7001

Internet: www.okbar.org

REGULATORY SUMMARY

Insurance Statutes:

In Oklahoma most prepaid legal service plans are considered under the auspices of casualty insurance. If a plan is deemed to be an insurance product, required filings must be approved by the Oklahoma State Board for Property and Casualty Insurance. See [here](#) for Rules.

LAWYER ETHICS RULES

Oklahoma has ethics rules based on the ABA Model Rules of Professional Conduct.

FILING REQUIREMENTS

No annual filing unless required by Oklahoma State Board for Property and Casualty Insurance.

GLSA REGULATION REPORTER STATE LISTING

OKLAHOMA

Links to Selected Text
State Statutes, Regulations, Attorney General Opinions, Etc.
Oklahoma Statutes -- Title 36, Article 14A, 1435.20, et. seq
Oklahoma Attorney General Opinion -- 1999 OK AG 43 (Decided 8/2/99)
Lawyer Ethics Rules and Opinions
Rule of Professional Conduct 1.18: Duties to Prospective Clients
Rule of Professional Conduct 5.4: Professional Independence of a Lawyer
Rule of Professional Conduct 7.1: Communications Concerning a Lawyer's Services
Rule of Professional Conduct 7.2: Advertising
Rule of Professional Conduct 7.3: Direct Contact with Prospective Clients
Ethics Counsel Articles

GLSA REGULATION REPORTER STATE LISTING

OREGON

INSURANCE DEPARTMENT CONTACTS

Oregon Division of Financial Regulation
Insurance Commissioner: **Laura Cali**
350 Winter Street, NE – Room 440
Salem, OR 97301-3883

Phone: (503) 947-7980
Fax: (503) 378-4351
Internet: <http://egov.oregon.gov/DCBS/>
Licensing: (503) 947-7981

STATE BAR CONTACTS

Oregon State Bar
Executive Director: **Helen Hirschbiel**
5200 S. W. Meadows Road
Lake Oswego, OR 97035-0889

Phone: (503) 620-0222
(800) 452-8260 (in-state)
Fax: (503) 684-1366
Internet: www.osbar.org

REGULATORY SUMMARY

Oregon Revised Statutes, Sections 750.505 – 750.715 regulate non-insurance legal expense organizations offering legal plans. Authorized insurers offering legal expense insurance are exempt from coverage as legal expense organizations.

Department Rules and Regulations

The Department of Consumer & Business Services has adopted administrative rules to implement the statute. These rules pertain primarily to statements of financial condition, application requirements and capitalization requirements.

ALERT- Law Change for Legal Access Plans
Effective 1/1/16

LAWYER ETHICS RULES

The Supreme Court approved the new Oregon Rules of Professional Conduct.

FILING REQUIREMENTS

Application and fees must be submitted to Director of the Department of Consumer and Business Services on a form prescribed by the director. Certificates must be renewed annually. Annual reports are covered under ORS 750.645. The names and addresses of sales and marketing representatives must be filed with the Director of the Department of Consumer and Business Services by January 1 and July 1 of each year.

GLSA REGULATION REPORTER STATE LISTING

OREGON

Links to Selected Text
State Statutes, Regulations, Attorney General Opinions, Etc.
Oregon Revised Statutes -- Title 56, Chapter 731 : Application of Insurance Code
Oregon Revised Statutes -- Title 56, Chapter 750 : Legal Expense Organizations Additional Information Amendment effective 1/1/16
Oregon Administrative Rules -- Title 836, Division 9 : Fees & Charges
Oregon Administrative Rules -- Title 836, Division 14 : Legal Expense Organization
Lawyer Ethics <u>Rules</u> and <u>Opinions</u>
The link to the all rules, scroll down to Rules of Professional Conduct, which opens a 37 page PDF.
Rule of Professional Conduct 1.18: Duties to Potential Client Page 17 (Amended 1/1/14)
Rule of Professional Conduct 5.4: Professional Independence of a Lawyer Page 25 (Amended 1/1/13)
Rule of Professional Conduct 7.1: Communication Concerning a Lawyer's Services Page 28 (Amended 1/1/14)
Rule of Professional Conduct 7.2: Advertising Page 28 (Amended 1/1/14)
Rule of Professional Conduct 7.3: Direct Contact with Prospective Clients Page 28 (Amended 1/1/14)
Oregon State Bar Formal Opinions 1991-79 – now 2005-79 2005-46 – group legal – who is the client? 2007-180 – internet advertising, referral fees 2011-183 – Scope of Representation, limiting scope

GLSA REGULATION REPORTER STATE LISTING

PENNSYLVANIA

INSURANCE DEPARTMENT CONTACTS

[Pennsylvania Insurance Department](#)

Commissioner: **Teresa D. Miller**

1326 Strawberry Square
Harrisburg, PA 17120

Phone: (877) 881-6388 (automated toll-free)

Fax: (717) 787-8585

Licensing: (717) 787-3840

Property Casualty: (717) 783-7823

REGULATORY SUMMARY

If there are questions regarding whether a particular activity is considered to be the business of insurance, contact the Pennsylvania Insurance Department for clarification at ra-in-producer@state.pa.us.

STATE BAR CONTACTS

Pennsylvania Bar Association
Executive Dir.: **Barry M. Simpson**
Pennsylvania Bar Center
100 South Street – P.O. Box 186
Harrisburg, PA 17108-0186

Phone: (717) 238-6715

(800) 932-0311

Fax: (717) 238-1204

Internet: www.pabar.org

LAWYER ETHICS RULES

The Pennsylvania Supreme Court adopted [ethics rules](#) based on the ABA Model Rules of Professional Conduct.

GLSA REGULATION REPORTER STATE LISTING

PENNSYLVANIA

Links to Selected Text
State Statutes, Regulations, Attorney General Opinions, Etc.
Lawyer Ethics Rules and Opinions
Rule of Professional Conduct 1.18: Duties to Potential Clients
Rule of Professional Conduct 5.4: Professional Independence of a Lawyer
Rule of Professional Conduct 7.1: Communications Concerning a Lawyer's Services
Rule of Professional Conduct 7.2: Advertising
Rule of Professional Conduct 7.3: Direct Contact with Prospective Clients
Formal Opinion F2014-300 Ethical Obligations for Attorneys Using Social Media

GLSA REGULATION REPORTER STATE LISTING

RHODE ISLAND

INSURANCE DEPARTMENT CONTACTS

Rhode Island Department of Business Regulation –
Insurance Division

Deputy Director and Superintendent of Insurance:

Elizabeth Kelleher Dwyer

233 Richmond Street
Providence, RI 02903

Phone: (401) 222-2223

Fax: (401) 222-5475

Internet:

<http://www.dbr.state.ri.us/divisions/insurance/>

STATE BAR CONTACTS

Rhode Island Bar Association

Executive Director: ***Helen Desmond McDonald***

115 Cedar Street
Providence, RI 02903

Phone: (401) 421-5740

Fax: (401) 421-2703

Internet: www.ribar.com

REGULATORY SUMMARY

Special Statute:

Rhode Island General Laws, Section [27-20.3-1ff.](#), establishes a means whereby five or more attorneys authorized to practice law in the state may obtain authorization from the state bar association to incorporate as a nonprofit legal services corporation. The regulatory scheme applies to programs which provide for reimbursement for specified legal services – either to the participating attorneys or subscribers – by

the nonprofit legal services corporation. The laws relating to the business of insurance do not apply to these nonprofit legal services corporations.

Insurance Statutes:

Rhode Island General Laws, Section [27-4.1-1 ff.](#), provides the exclusive authority for writing legal services insurance, which is classified as being within the scope of accident and health insurance.

The statutory definition of “legal services insurance” states that it may also include provisions for basic legal services rendered to a beneficiary, by telephone or mail, by one or more attorneys who are not under the control of the insurer.

Under the statute, beneficiaries of legal services shall not be required to select attorneys other than those of their own choosing, except in connection with basic legal advice provided by telephone or mail.

LAWYER ETHICS RULES

[The Rhode Island Rules of Professional Conduct](#) were amended effective April 15, 2007.

FILING REQUIREMENTS:

Programs must file an annual report with the Director of the Department of Business Regulation on or before March 1. In addition, quarterly statements must be filed with the Insurance Commissioner.

GLSA REGULATION REPORTER STATE LISTING

RHODE ISLAND

Links to Selected Text
State Statutes, Regulations, Attorney General Opinions, Etc.
General Laws of Rhode Island -- Title 27: Insurance - Chapter 4.1 - Legal Services Insurance
General Laws of Rhode Island -- Title 27: Insurance - Chapter 20.3 - Nonprofit Legal Service Corporations
Lawyer Ethics Rules and Opinions
The ethics rules open in a 120 page PDF, the page numbers below refer to the rule's location within the document
Rule of Professional Conduct 1.18: Duties to Prospective Clients Page 57
Rule of Professional Conduct 5.4: Professional Independence of a Lawyer Page 85
Rule of Professional Conduct 7.1: Communications Concerning a Lawyer's Services Page 98
Rule of Professional Conduct 7.2: Advertising Page 99
Rule of Professional Conduct 7.3: Personal Contact with Prospective Clients Page 102
Rhode Island Supreme Court Ethics Advisory Panel Ethics Opinions online opinions are available from 1987 to present with older opinions being added.

GLSA REGULATION REPORTER STATE LISTING

SOUTH CAROLINA

DEPARTMENT OF CONSUMER AFFAIRS CONTACTS

South Carolina Department of Consumer Affairs
Carri Grube Lybarker, Administrator
3600 Forest Drive, Third Floor
Columbia, SC 29250

Phone: (803) 734-4200
Fax: (803) 734-4287
Internet:
<http://www.sconsumer.gov/>

[Prepaid licensing information and forms here](#)

STATE BAR CONTACTS

South Carolina Bar
Executive Director: **Robert S. Wells**
950 Taylor Street
Columbia, SC 29202

Phone: (803) 799-6653
Fax: (803) 799-4118
Internet: www.sctbar.org

REGULATORY SUMMARY

Prepaid Legal Services are regulated by the Department of Consumer Affairs. Legal Services are defined as “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 companies must register with the Department of Consumer Affairs.

All contracts must be filed with the department for approval prior to being offered to the public.

FILING REQUIREMENTS

[Representatives must register with the Department October first.](#)

[Prepaid legal services companies must register March first.](#)

LAWYER ETHICS RULES

The South Carolina Supreme Court has adopted ethics rules based on the ABA Model Rules of Professional Conduct. [Click here and scroll down to Rule 407.](#)

GLSA REGULATION REPORTER STATE LISTING SOUTH CAROLINA

Links to Selected Text
State Statutes, Regulations, Attorney General Opinions, Etc.
South Carolina Title 37-Consumer Protection Code -- Chapter 16: Prepaid Legal Services
South Carolina Attorney General Opinion -- 2002 WL 1340418 (S.C.A.G.) opinion available at the AG's office or on Westlaw or Lexis research data bases. For summary of Opinion 02-04, click here .
Lawyer Ethics Rules and Opinions
Rule of Professional Conduct 1.18: Duties to Prospective Client Amended 4/15/15
Rule of Professional Conduct 5.4: Professional Independence of a Lawyer
Rule of Professional Conduct 7.1: Communications Concerning a Lawyer's Services
Rule of Professional Conduct 7.2: Advertising
Rule of Professional Conduct 7.3: Direct Contact with Prospective Clients
South Carolina Ethics Advisory Opinions 79-03 opinion under old rules involving group legal services 92-28 two separate scenarios involving group legal services 95-11 participation with association offering legal services as a benefit 00-10 participation with online matching service 01-03 lawyer may pay for reasonable costs of advertising 02-04 A lawyer may be employed by a nonprofit organization run by nonlawyers that offers to provide legal services to beneficiaries of the organization. 06-13 may a lawyer provide discounted legal services to association members 09-10 may a lawyer claim an internet web profile 11-03 lawyer may provide simple power of attorney in exchange for donation to charity 11-05 participation with daily deal websites 12-03 participation with a question answering website 14-01 participation with a firm that pays the lawyer directly, but prohibits the lawyer from disclosing the details to the client

GLSA REGULATION REPORTER STATE LISTING

SOUTH CAROLINA

Summary of South Carolina Attorney General Opinion 02-04

Facts:

A private non-profit organization that provides assistance to victims of crime proposes to hire an attorney to represent the victims they assist in civil actions and also to assist in criminal prosecution of their cases in magistrates' court. The attorney would actually be an employee of the non-profit organization, which is run by non-lawyers. Although steps would be taken to prevent the non-lawyers from influencing the legal judgment of the lawyer regarding a case, the general supervision of the lawyer would be by non-lawyers.

Question:

Does the lawyer's employment by the organization violate S.C. Rule of Professional Conduct 5.4 (Professional Independence of Lawyer) or 5.5 (Unauthorized Practice of Law)?

Summary of Opinion:

A lawyer may be employed by a nonprofit organization run by non-lawyers that offers to provide legal services to beneficiaries of the organization. The organization may establish general standards for selection of cases but may not interfere with the lawyer's representation of individual clients. If the lawyer is supervised by a non-lawyer, the supervisor cannot control the lawyer's decision-making in individual cases, but is limited to determining compliance with general policies of the organization. The lawyer may not disclose information about the client's case to a non-lawyer supervisor except to the extent necessary for supervisor to determine compliance with general organizational policies. Disclosure of such information is impliedly authorized to carry out the representation. The opinion is based on the assumption that no fees are being paid to the organization, so no issue of fee splitting is presented. The Committee noted that the legal services being offered are provided by the lawyer, not by the organization.

GLSA REGULATION REPORTER STATE LISTING

SOUTH DAKOTA

INSURANCE DEPARTMENT CONTACTS

South Dakota Division of Insurance
Director: **Larry Deiter**
124 S. Euclid Ave., 2nd Floor
Pierre, SD 57501

Phone: (605) 773-3563
Fax: (605) 773-5369
Internet: <http://dlr.sd.gov/insurance/>

STATE BAR CONTACTS

State Bar of South Dakota
Executive Director: **Thomas C. Barnett, Jr.**
222 East Capitol Ave.
Pierre, SD 57501-2596

Phone: (605) 224-7554
(800) 952-2333
Fax: (605) 224-0282
Internet: www.sdbar.org

REGULATORY SUMMARY

Special Statute:

South Dakota Compiled Laws, [Section 58-42-1ff.](#), to regulate prepaid legal service plans as

insurance products was repealed in 2012. According to the division of insurance "Legal expense insurance is nonexistent in South Dakota and these statutes have sat untouched since their enactment in 1988."

Attorney General Opinions:

In September 1978 the state Attorney General issued Opinion No. 78-39. This opinion, which preceded the enactment of the legal expense insurance statute, addressed the issue of whether a state bar sponsored prepaid legal plan constituted an insurance product under the insurance laws.

In December 1986, the Attorney General addressed a slightly different type of legal services plan.

LAWYER ETHICS RULES

In 2003, the South Dakota Supreme Court amended their ethics rules based on the Ethics 2000 Commission's modification of the ABA Model Rules of Professional Conduct, effective January 1, 2004. [South Dakota Rules of Professional Responsibility.](#)

GLSA REGULATION REPORTER STATE LISTING SOUTH DAKOTA

Links to Selected Text
State Statutes, Regulations, Attorney General Opinions, Etc.
South Dakota Insurance Code: Chapter 58-42 - Legal Expense Insurance – REPEALED 2012
Office of the Attorney General -- Official Opinion No. 78-39 (Sept. 19, 1978)
Office of the Attorney General -- Official Opinion No 86-45 (Dec. 19, 1986)
Lawyer Ethics Rules and Opinions
For the Bar Association listing showing individual rules, click here For Opinions, click on the link and then search using links on left navigation bar.
Rule of Professional Conduct 1.18: Duties to Potential Client
Rule of Professional Conduct 5.4: Professional Independence of a Lawyer
Rule of Professional Conduct 7.1: Communications Concerning a Lawyer’s Services
Rule of Professional Conduct 7.2: Advertising
Rule of Professional Conduct 7.3: Personal Contact with Prospective Clients
Ethics Opinions 95-12 click and then search for opinion by number 98-10 click and then search for opinion by number

GLSA REGULATION REPORTER STATE LISTING

TENNESSEE

INSURANCE DEPARTMENT CONTACTS

Tennessee Department of Commerce & Insurance
Division of Insurance:
Commissioner: **Julie Mix McPeak**

500 James Robertson Parkway, 4th Floor
Nashville, TN 37243

Phone: (615) 741-2218
Fax: (615) 532-7389
Internet: <http://www.tn.gov/commerce/>

STATE BAR CONTACTS

Tennessee Bar Association
Executive Director: **Allan F. Ramsaur**
221 Fourth Ave. North, Suite 400
Nashville, TN 37219

Phone: (615) 383-7421
Fax: (615) 297-8058
Internet: www.tba.org

REGULATORY SUMMARY

The Tennessee Legal Insurance Act, [Tennessee Code](#) Sections 56-43-101 ff., regulates prepaid legal services plans as a form of insurance.

The statute requires the filing of an annual report, verified by at least two of the insurer's principal officers, on or before March 1.

Division of Insurance Regulations:

Effective April 20, 1991, the Division of Insurance adopted rules and regulations implementing the Tennessee Legal Insurance Act. These rules and regulations set the requirements for obtaining a certificate of authority, as well as financial and licensing requirements.

FILING REQUIREMENTS:

Premium taxes must be paid on or before March 1 of each year (0780-1-60-.08).

Attorney General Opinions:

Two opinions, both issued prior to the enactment of the Tennessee Legal Insurance Act, discuss whether various plans constitute the business of insurance.

LAWYER ETHICS RULES

The revised [Tennessee Rules of Professional Conduct](#) are patterned after the ABA Model Rules of Professional Conduct and became effective January 1, 2011.

Rule 7.6 requires lawyers participating in the activities of an Intermediary Organization, such as a prepaid legal services plan, to ascertain that the organization meets the requirements of Rule 7.6 (b). The comment indicates that it normally will be sufficient to determine that the Organization has registered with the Tennessee Board of Professional Responsibility.

Supreme Court [Rule 44](#) contains the Regulations of Lawyer Intermediary Organizations.

GLSA REGULATION REPORTER STATE LISTING *TENNESSEE*

Links to Selected Text
State Statutes, Regulations, Attorney General Opinions, Etc.
Tennessee Insurance Code : Chapter 43 - Legal Insurance
Rules of the TN Dept. of Commerce and Insurance -- Division of Insurance: Chapter 0780-1-60 - Legal Insurance
Bills Introduced to amend the Tennessee Legal Insurance Act – died in committee 2015 (SB 0329, HB0295)
Office of the Attorney General -- Opinion No. 86-020 (Jan. 30, 1986)
Office of the Attorney General --Opinion No. 79-254 (May 23, 1979)
Lawyer Ethics Rules and Opinions
Rule of Professional Conduct 5.4: Professional Independence of a Lawyer
Rule of Professional Conduct 7.1: Communications Concerning a Lawyer's Services
Rule of Professional Conduct 7.2: Advertising and Other Communications Not Directed to Specifically Identified Recipients
Rule of Professional Conduct 7.3: Solicitation and Other Communications Directed to Specifically Identified Recipients
Rule of Professional Conduct 7.6: Intermediary Organizations
Supreme Court Rule 44: Regulation of Lawyer Intermediary Organizations Amended 8/18/14
Board of Professional Responsibility: No. 85-F-102 – propriety of participating in prepaid plans No. 2004-F-149 – advertising claims No. 2006-F-152 – whether an injury helpline is an intermediary organization

GLSA REGULATION REPORTER STATE LISTING *TENNESSEE*

Office of the Attorney General
State of Tennessee
Opinion No. 86-020
January 30, 1986

Honorable John C. Neff
Commissioner
Department of Commerce & Insurance
114 State Office Building
Nashville, TN 37219

Dear Commissioner Neff:
You have requested an opinion on the following question:

QUESTION

Do the three prepaid legal plans described infra fit within the definition of "insurance" in §T.C.A. 56-7-101 and therefore become subject to regulation by the Department of Commerce and Insurance?

OPINION

It is the opinion of this office that: Plan No. 1 does constitute insurance. Plan No. 2 does not constitute insurance. Plan No. 3 does not constitute insurance.

ANALYSIS

In your letter you describe the following three prepaid legal services plans:

Plan No. 1 provides, for a fixed fee, the following services:

One half-hour of legal consultation;
Payment of attorney's fees up to \$250 for defense of matters involving driving a licensed motor vehicle;
Payment of attorney's fees up to \$5,000 for defense in a covered civil or criminal action;
Payment of attorney's or accountant's fees up to \$5,000 for services relating to an IRS audit.

Plan No. 2 provides the following services for a fixed fee:

Unlimited telephone advice and consultation with attorneys who contract with the plan;
Unlimited letters written on behalf of a Plan member;
Unlimited telephone calls made on behalf of a Plan member;
Unlimited review of simple documents;
Referral, if needed, to a legal service Plan "panel attorney" who will offer an initial half-hour consultation for \$15 and a 25% reduction in his customary fee.

Plan No. 3 provides the following services for a fixed fee:

Unlimited telephone advice and consultation by staff attorneys;
Letters and telephone calls on non-complicated matters by staff attorneys;
Preparation of a simple will;
Document review up to three pages at no additional charge;
Referral to selected attorneys who will provide legal services at reduced rates of \$50 per hour for office work and \$60 per hour for in-court or out- of-office work.

Your question is whether each of the above plans fits within the definition of "insurance" in T.C.A. 56-7-101 and is therefore subject to regulation by your Department. As you point out, this office has issued three previous opinions regarding whether various prepaid legal plans constitute insurance. In an opinion of March 12, 1973, to the Department of Insurance, we opined that "indemnity coverage for legal services" did come within the legal definition of "insurance" in this State. The opinion stated that the "policy" was "entitled by the company as a Legal Services and Expenses indemnification insurance policy." The opinion was brief and provided few details about the plan.

The next opinion was dated April 7, 1978, to then Commissioner of Insurance Millard V. Oakley, and found that the prepaid legal plan described therein constituted a contract of insurance. This plan was more thoroughly described in the

GLSA REGULATION REPORTER STATE LISTING

TENNESSEE

third opinion dated May 23, 1979, in which it was called the "Previous Plan." In the third opinion it was stated that the Previous Plan constituted insurance "[b]ecause of the substantial indemnity provisions and the contingent nature of the issuers' obligation." It was further explained that most of the events covered by the "Previous Plan" were the kinds of chance events normally covered by insurance. In other words, the element of fortuitousness was strong in the Previous Plan. Also, the indemnity feature of the Previous Plan covered the first \$1,000 of legal fees for a particular covered event.

The third opinion distinguished this Previous Plan from the First and Second Plans described therein. That opinion found that the nature of the contingency in the First and Second Plans was "different from that to be expected in an insurance contract." The First Plan for a fixed fee provided unlimited telephone services, a simple will, handling of complaints against third parties by telephone or letter, and referral to attorneys to provide work at a fixed price per hour. The Second Plan for a fixed fee provided a specified number of hours of legal services without charge and fixed rates for hours in excess of the specified number. Although the opinion found that both the First and Second Plans contained a form of indemnity and of contingency, it was concluded that "the nature of the contingency is different from that to be expected in an insurance contract," i.e., there was no fortuitousness, in the ordinary sense of the word, in the events which precipitated the retention of an attorney under these plans. They contained "only a very minimal indemnity feature, if any."

With this background, let us now examine the current state of the law. A leading case is *People v. California Mutual Assoc.*, 441 P.2d 97, 68 Cal.Rptr. 585 (Cal.1968) (en banc), which involved an association of physicians providing health care. The court stated that in determining whether such a plan was insurance or a "health care service plan," there must be a balancing between protecting the members from the risk of personal liability by requiring financial reserves and, on the other hand, "a strong social policy to encourage the services which health plans provide the public." 441 P.2d at 100. The court held:

A finding that the principal object and purpose of a plan is direct service merely establishes that the indemnity feature is not dominant, yet, a substantial minority of the members may face liability without the security of financial reserves. We, therefore, conclude that where indemnity is a significant financial proportion of the business, the organization must be classified as an 'insurer' for the purposes of the Knox-Mills Plan Act....

We realize that this determination involves balancing the indemnity aspects against the direct service aspects of the business, but only in the context of the plan as a whole can it be determined whether the indemnity feature is so significant as to warrant imposing the Insurance Code financial reserve requirements. *Id.* at 101. In the process, the court rejected the "principal object and purpose test" which had been formulated in *California Physicians' Service v. Garrison*, 172 P.2d 4 (Cal.1946) (en banc). In other words, the 1968 case holds that even if the principal object and purpose of a plan is "service," the plan will be considered "insurance" if indemnity is a "significant financial proportion of the business" in order to protect members from the risk of liability.

Another leading case is *Huff v. St. Joseph's Mercy Hospital*, 261 N.W.2d 695 (Iowa 1978), in which the court quoted R. KEETON, BASIC TEXT ON INSURANCE LAW, at 6:

'All insurance contracts concern risk transference, but not all contracts concerning risk transference are insurance. The complex bundle of risks from a venture gives rise to a variety of kinds of legal risk transference, some of which are not regarded as insurance for any purpose, and some of which are regarded as insurance for one purpose but not for another. Even in states having the broadest statutory or decisional definitions of insurance, which if literally applied would include all or nearly all contracts transferring risks, many arrangements literally within such definitions are not treated as insurance transactions in legal contexts.' 261 N.W.2d at 700. The Iowa Court concluded that the prepaid obstetrical contracts in question were not insurance because although they did cover risks, "the principal benefit or effect is the hospital care as opposed to a minimal indemnity feature. Additionally, the contracts in their operation are not insurance because there is express provision for refund or additional charge depending on the actual hospital expense incurred." *Id.* at 700-01.

Some fundamental principles had been well stated in *Jordan v. Group Health Ass'n.*, 107 F.2d 239 (D.C.Cir.1939). The court stated that although insurance and indemnity are not identical concepts, each involves contractual security against anticipated loss. There must be a risk of loss to which one party may be subjected by contingent or future events "and an assumption of it by legally binding arrangement by another." 107 F.2d at 245. "Hazard is essential and equally so a shifting of its incidence.... Insurance also, by the better view, involves distribution of the risk, but distribution without assumption hardly can be held to be insurance." *Id.* (footnotes omitted). Later, the court stated: "That an incidental element of risk distribution or assumption may be present should not outweigh all other factors ... But obviously it was not

GLSA REGULATION REPORTER STATE LISTING

TENNESSEE

the purpose of the insurance statutes to regulate all arrangements for assumption or distribution of risk The fallacy is in looking at the risk element, to the exclusion of all others present or their subordination to it. The question turns, not on whether risk is involved or assumed, but on whether that or something else to which it is related in the particular plan is its principal object and purpose.” Id. At 247-48 (footnote omitted). It should be noted that the “principal object and purpose” test was rejected by the 1968 California Supreme Court. Nevertheless, the Jordan analysis is still relevant.

A case actually involving a prepaid legal services plan is *Feinstein v. Attorney-General*, 36 N.Y.2d 199, 366 N.Y.S.2d 613 (1975), in which the New York Court of Appeals declined to hold said plan to be insurance. While noting that a literal reading of the New York statute defining insurance would include any contract contingent upon a “fortuitous event,” the court stated: “As for many of the legal services involved, however, there is no fortuitousness, in any ordinary sense of the word, in the event which precipitates the retention of a lawyer, such as the drafting of a will, a separation agreement, the purchase of a house, and many others of the same kind.” 366 N.Y.S.2d at 620.

The court went on to state: “Viewed as a provider of professional services, sought as a matter of choice, at flat fees rather than as reimbursement for material losses or expenses precipitated by fortuitous events, the proposed plans do not pose the dangers that the Insurance Law was designed to obviate. Those dangers embrace inadequate coverage of determinable actuarial risks, excessive premiums on an actuarial basis, and fiscal irresponsibility.” Id. at 621 (citation omitted).

Another case that emphasizes the distinction between indemnity and service contracts is *Professional Lens Plan v. Department of Insurance*, 387 So.2d 548 (Dist.Ct.App.Fla.1980), which involved a prepaid optometric plan. The plan contained a service contract between the Plan and the optometrist in which there was no contractual obligation or duty between the Plan and the patient. This is a service contract of the type referred to in the trade as a “provider agreement,” which was held not to be the “business of insurance” in *Group Life & Health Ins. Co. v. Royal Drug Co.*, 440 U.S. 205, 99 S.Ct. 1067, 59 L.Ed.2d 261 (1979). As for the contract between the optometrist and the patient, it was not one of indemnity but rather gave the patient the option to purchase additional lenses at a fixed price. The Florida court therefore held that the Plan was not subject to regulation under the Florida Insurance Code. 387 So.2d at 549-51.

We must now apply these legal principles to the prepaid legal plans whose elements are set out at the beginning of this analysis. In the first plan the principal element is that of indemnity, and it must therefore be considered a contract of insurance. The legal expenses covered are ones arising from what ordinarily would be considered fortuitous events, i.e., traffic violations, loss of driver’s license, and criminal actions. In the event of these occurrences, the covered individual will be indemnified for attorney’s fees up to a stated maximum amount. In addition, the company provides a “trial defense fund” whose maximum payment increases by \$5,000 each year until it reaches \$25,000 per year in the fifth year. The covered individual is entitled to use the attorney of his choice and may receive up to one-half hour of legal consultation and/or assistance at the attorney’s standard hourly rate on any personal legal problem. The covered individual and his attorney decide how to handle any further charges.

These provisions make it clear that the company offering the first plan is not offering legal services but is rather offering to indemnify the covered individual for attorney’s fees up to a maximum amount. This fits within the definition of insurance set out in §T.C.A. 56-7-101 and in the above-cited cases.

As for Plan 2, indemnity does not appear to be a “significant financial proportion of the business”. *People v. California Mutual Ass’n.*, 441 P.2d 97, 101, 68 Cal.Rptr. 585 (Cal.1968) (in bank). Rather, its primary thrust is service. The plan provides unlimited service for “basic services” and access to a “referral panel” of attorneys if further service is needed. These panel attorneys will offer an initial half-hour consultation for \$15 and a 25% reduction in their usual and customary fees for additional time.

As for Plan No. 3, it likewise emphasizes service rather than indemnity. It also offers unlimited telephone advice and consultation along with letters and telephone calls on non-complicated matters. For more complicated matters, a panel of referral attorneys is available at a rate of \$50 per hour for in-office work and \$60 for in-court or out-of-office work. Again, there is no substantial indemnity feature.

For these reasons we are of the opinion that Plan No. 1 does constitute insurance under T.C.A. 56-7-101 and is therefore subject to regulation by your Department. Plans No. 2 and 3 do not constitute insurance and are therefore not subject to regulation by your Department.

GLSA REGULATION REPORTER STATE LISTING
TENNESSEE

If you have further questions or comments about this matter, please feel free to contact us.

Sincerely,
W.J. Michael Cody John Knox Walkup
Attorney General & Reporter Chief Deputy Attorney General

GLSA REGULATION REPORTER STATE LISTING

TENNESSEE

Office of the Attorney General
State of Tennessee
Opinion No. 79-254

May 23, 1979

Mr. John C. Neff
Commissioner
Department of Insurance
Division of Loans & Securities
114 State Office Building
Nashville, Tennessee 37219

Dear Commissioner Neff:

Pursuant to your request of March 30, 1979, and acting pursuant to Tenn. Code Ann. § 8-609, I hereby provide you with the opinion of this office on the following questions:

QUESTION

1. Do legal service plans which for a fixed fee provide unlimited telephone services, a simple will, handling of complaints against third parties by telephone or letter, and referral to attorneys to provide work at a fixed price per hour (The 'First Plan') constitute insurance contracts within the meaning of Tenn. Code Ann. § 56-1101?
2. Do legal service plans which for a fixed fee provide a specified number of hours of legal services without charge and fixed rates for hours in excess of the specified number (The 'Second Plan') constitute insurance contracts within the meaning of Tenn. Code Ann. § 56-1101?

OPINION

Neither of the above described plans constitute insurance contracts.

ANALYSIS

The term 'insurance contract' is defined at Tenn. Code Ann. § 56-1101:

A contract of insurance is an agreement by which one party, for a consideration, promises to pay money, or its equivalent, or to do some act of value to the assured, upon the destruction or injury, loss or damage of something in which the other party has an insurable interest . . .

This office has previously opined that indemnity coverage of needs for legal services constituted insurance. Opinion No. 117, March 12, 1973 [to Department of Insurance]. In making that determination, we considered primarily three factors, the indemnity nature of the plan, the issuer's characterization of the plan as insurance, and the contingent nature of the obligation of the issuer. This office subsequently opined that an indemnity plan which provided the service of an attorney as required instead of cash payment constituted insurance on the ground that substitution of services for cash did not affect the nature of a contract as insurance. The description of the plan contained in the second opinion (The 'Previous Plan') was too brief to permit an adequate comparison to the First Plan and the Second Plan.

The Previous Plan incorporated all of the basic provisions of the First Plan, except for referrals to attorneys for to provide all additional work at a fixed price. In addition, the Previous Plan provided representation on a number of other matters as to which the attorneys rendering the services either would charge their usual fees, and credit the fee with \$1,000, or would charge their usual fees with respect to recoveries in excess of \$1,000. Thus, if a claim for recovery was for less than \$1,000, no fee would be charged; if it exceeded \$1,000:

' . . . Firm shall assess its normal and usual fee with respect to the excess over One Thousand Dollars (\$1,000), or if the Plan Member and Firm agree to have firm work at an hourly rate, then Firm shall credit Plan Member with a One Thousand Dollar (\$1,000) reduction from its normal and usual fee.

This provision applied to administrative and judicial cases against a state, county, or local government, actions under §42 U.S.C. 1983 or similar State or Federal laws, claims against insurance companies, product liability claims, and claims under a warranty. In other cases, a member of the Previous Plan would receive a \$1,000 credit against the usual fee. These included probate, cases where relief other than money damages was sought, divorce, separation or annulment,

GLSA REGULATION REPORTER STATE LISTING

TENNESSEE

juvenile court proceedings, defense of motor vehicle violations, defense of civil actions, and defense of felony and jury trial cases.

From the foregoing description, it can be seen that one primary function of this Previous Plan was to provide indemnity against the first \$1,000 of expenses in legal matters, and the other was to provide the basic legal services of the First Plan. Because of the substantial indemnity provisions and the contingent nature of the issuers' obligation, we concluded that the Previous Plan constituted insurance.

Many of the recent cases on definitions of insurance have involved distinguishing service contracts from contracts of insurance. Thus, in *People v. Cal. Mutual Association*, 441 P.2d 971 (Cal. S. Ct. 1968), the defendant was a health service plan members and to look solely to the plan for payment of specified fees. It later appeared that the plan contracted with other physicians who did not agree to limit the source of payment to the plan, and that it contracted with hospitals who did not limit themselves to any particular fund. It also appeared that while the plan encouraged members to use participating physicians, it also paid fees of non-participating physicians in areas where it did not have participating physicians. Because of the payments to hospital plans and non-participating physicians, there was a question as to whether the plan constituted indemnity-type insurance. The Court held that if a significant feature of the plan was indemnity-type-payments the plan would constitute insurance. The rationale for the holding was the Court's view of the policies justifying strict regulation of the insurance business.

Where indemnity features are present, the member bears the risk of personal liability for medical services. This is the insurance risk which can be protected against by financial reserves to assure that the member will receive the benefits for which he has paid. *Id.* at 100. See also, *Cal Physicians Service v. Garrison*, 172 P.2d 4 (Cal. S. Ct. 1946); *New Jersey Association of Indiana Insurance Agents v. New Hospital Service Plan of New Jersey*, 320 A.2d 504 (N.J. Super 1974); *Group Health Insurance of New Jersey v. Howell*, 193 A.2d 103 (N.J. S. Ct. 1963). *Huff v. Saint Joseph's Mercy Hospital of Dubrigne Corp.*, 261 N.W.2d 695 (Iowa S. Ct. 1978).

In each of these cases, however, the legislatures have simplified the task by providing separate regulation for health service providers and insurers. In the *Huff* case, *supra*, the Hospital defendant established a prepaid obstetrical contract plan pursuant to which pregnant women would pay \$400 for all necessary hospital services relative to childbirth for the first seven days. If the stay exceeded seven days, the Hospital charged its normal rates for the excess. If the stay were less than seven days, the Hospital would refund any difference between costs incurred and \$400. If the patient went elsewhere, the Hospital refunded all money. After rejecting the Commissioner's contention that this contract constituted a health maintenance organization under Iowa law, the Court considered the argument that it was insurance.

Under Iowa law, insurance:

. . . denotes a contract by which one party for a consideration called the 'premium', assumes particular risks of the other party and promises to pay him or his nominee a certain or ascertainable sum of money on a specified contingency. . . . ' *Id.* at 700.

The Court cites Robert E. Keeton, *Basic Text on Insurance Law* at 6 for the propositions that:

1. All insurance contracts concern risk transference.
2. Even in states having the broadest statutory or decisional definitions of insurance, which if literally applied would include all or nearly all contracts transferring risk, many arrangements literally within such definitions are not treated as insurance transactions in legal contexts.

Applying these principles, the Court concluded that although the payment did cover certain risks of complications, 'the principal benefit or effect is the hospital care as opposed to a minimal indemnity feature.' *Id.* at 700. Additionally, since refunds were possible, the contract did not act as insurance.

In Tennessee, there is no separate regulation. The definition of insurance clearly contemplates that provision of future services constitutes insurance. Still, it cannot be the case that every contract for future services is one of insurance. It is therefore appropriate to consider the elements of a contract which mark it as one of insurance. Our prior opinions have identified indemnity and contingency as essential elements of insurance. Both of these elements are present in all three plans in one form or another.

In the First Plan there is a form of indemnity against certain potential legal needs. If one of the specified services will suffice, the citizen is protected against expense. Similarly, in the Second Plan, indemnity is available for the first hours of

GLSA REGULATION REPORTER STATE LISTING

TENNESSEE

legal work. The First Plan and the Second Plan also involve contingency in the sense that neither operates except on the occurrence of certain events.

As for many of the legal services involved, however, there is no fortuitousness, in any ordinary sense of the word, in the event which precipitates the retention of a lawyer, such as the drafting of a will, a separation agreement, the purchase of a house and many others of the same kind.

Thus, in the case of the First Plan and the Second Plan, the nature of the contingency is different from that to be expected in an insurance contract.

In the Previous Plan a substantial range of legal services are expressly covered, services broader than those in the First Plan and the Second Plan. The indemnity feature is substantially different, covering as it does \$1,000 of legal fees. And for most of those kinds of services, the above discussion of fortuitousness or contingency, is much less applicable. For example, death, tort claims, and civil rights claims, among others, are the kinds of chance events normally covered by insurance. Thus, the contingency element is substantially different from that of the First Plan and the Second Plan.

The policy behind insurance regulation does not add much light, since once the legal firms have been engaged, the plan member probably has enforceable legal rights of equal power in each case. Clearly enforcement is more of a problem under the Previous Plan with its \$1,000 credit against normal fees. The First Plan and the Second Plan lock in specified rates for additional services, which is substantially easier to enforce. Thus, the need for regulation is somewhat less although the regulation is not the kind normally associated with insurance.

The foregoing analysis shows the difficulty of determining the point at which legal service plans cease being insurance and move into the realms of retainer agreements or similar arrangements to provide future services on an as-needed basis.

Risk transference as described in the Huff case is not directly addressed in Tennessee law. It appears only under the heading of contingency. However, that it is the critical underlying concept of insurance generally is clear. Therefore, Professor Keeton's general concept that not all risk-transference contracts should be deemed to be insurance provides supports our view that not all contracts for future services constitute insurance. The Iowa rule appears to be that in insurance, the non-risk portion of the contract must be the principal feature as compared with the indemnity feature which is minimal. This is close to the California rule in *People v. California Mutual Association*, supra. Applying this rule to the Previous Plan would require a very difficult determination as to the significance of the indemnity features described above. Applying this rule to the First Plan and the Second Plan is much easier since there is only a very minimal indemnity feature, if any.

Therefore, we are of the opinion that the First Plan and the Second Plan do not constitute insurance within the meaning of Tenn. Code Ann. § 56-1101.

Very truly yours,

William M. Leech, Jr., Attorney General and Reporter

C. Hayes Cooney, Chief Deputy Attorney General

Edwin M. Walker, Assistant Attorney General

GLSA REGULATION REPORTER STATE LISTING TEXAS

INSURANCE DEPARTMENT CONTACTS

Texas Department of Insurance
Commissioner: **David Mattax**
333 Guadalupe
Austin, TX 78701

Phone: (512) 463-6464
Fax: (512) 475-2005
Internet: www.tdi.state.tx.us

Department Contacts:

Agent/Agency Licensing: (512) 676-6525
Company Licensing & Registration:
(512) 676-6376
Property & Casualty Section: (512) 676-6685

LICENSING & REGULATION CONTACTS

Texas Department of Licensing & Regulation
Executive Director: **William H. Kuntz, Jr.**
920 Colorado
Austin, Texas 78701

Phone: (512) 463-6599
Fax: (512) 475-2871
Internet: <http://www.license.state.tx.us/>

Legal Services Contracts:
[For Profit Legal Services Contracts](#)

STATE BAR CONTACTS

State Bar of Texas
Executive Director: **Michelle Hunter**
1414 Colorado
Austin, TX 78701

Phone: (512) 463-1463
Fax: (512) 463-1475
Internet: www.texasbar.com

REGULATORY SUMMARY

Senate Bill 597, passed by the 78th Legislature and signed into law by the Governor on June 20, 2003, transferred regulation of for-profit legal service contract companies and sales representatives to the [Texas Department of Licensing and Regulation](#) (TDLR) from the Texas Department of Insurance.

Necessary forms are available for download at: <http://www.license.state.tx.us/legalsvcs/legalsvcsforms.htm>

Insurance Department Regulation:

Non-profit legal service plans continue to be regulated by the Department of Insurance. Texas Insurance Code, Chapter [260](#), provides regulation for non-profit plans.

Other Statutes:

Texas Lawyer Referral Service Quality Assurance Act (Article 320d, Vernon's Texas Civil Statutes), [regulates lawyer referral services](#) and entities using the term "referral service."

FILING REQUIREMENTS

Registration Forms must be filed with the Texas Department of Licensing and Regulation before March 1 of each year.

LAWYER ETHICS RULES

The State Bar of Texas is an administrative agency of the state's judicial branch that manages the lawyer disciplinary process.

GLSA REGULATION REPORTER STATE LISTING TEXAS

Links to Selected Text
<u>State Statutes</u> , <u>Regulations</u> , <u>Attorney General Opinions</u> , Etc.
<u>Texas Insurance Code, Title 3, Subtitle C, Chapter 260 -- Non-Profit Legal Services Corporations</u>
<u>Texas Occupations Code, Title 5, Subtitle B, Chapter 951 -- Regulation of Financial & Legal Services</u>
<u>Texas Occupations Code, Title 5, Subtitle B, Chapter 953 -- Regulation of For-Profit Legal Service Contract Companies</u>
<u>HB 3090</u> to Amend Regulation of For-Profit Legal Services Contract Companies <u>died in committee</u>
<u>Texas Insurance Code, Title 6, Subtitle H, Chapter 961 -- Nonprofit Legal Services Corporations</u>
<u>Texas Administrative Code, Title 16, Part 4, Ch. 57 -- For-Profit Legal Service Contract Companies</u>
<u>Texas Administrative Code, Part I, Ch. 23 -- Prepaid Legal Services</u>
<u>Office of the Attorney General -- Opinion No. 92-41 (August 24, 1992)</u>
Texas Department of Licensing and Regulation -- <u>FAQs</u>
Lawyer <u>Ethics Rules and Opinions</u>
Rule of Professional Conduct <u>5.04</u> : Professional Independence of a Lawyer
Rule of Professional Conduct <u>7.01</u> : Firm Names and Letterhead
Rule of Professional Conduct <u>7.02</u> : Communications Concerning a Lawyers Service
Rule of Professional Conduct <u>7.03</u> : Prohibited Solicitations & Payments
Rule of Professional Conduct <u>7.04</u> : Advertisements in the Public Media
Rule of Professional Conduct <u>7.05</u> : Prohibited Written, Electronic, Or Digital Solicitations
Rule of Professional Conduct <u>7.06</u> : Prohibited Employment
Rule of Professional Conduct <u>7.07</u> : Filing Requirements for Public Advertisements and Written, Recorded Electronic or Other Digital Solicitations
Texas Commission on Professional Ethics <u>446</u> -May 1987 – wills referrals from financial planning organization <u>561</u> -August 2005 – payment for referrals from privately sponsored internet site <u>562</u> -October 2005 – legal services for federal agencies, referral questions <u>573</u> -July 2006 – payment for referrals from privately sponsored internet site <u>616</u> – April 2012 - may a law firm agree with a for-profit legal service contract company to provide legal services at discounted rates to persons who have contracted with the legal service contract company? <u>643</u> -May 2014 - is it permissible for a lawyer to arrange for a debt management services company owned by the lawyer to refer customers of the company to the lawyer’s law firm for legal services?

GLSA REGULATION REPORTER STATE LISTING

UTAH

INSURANCE DEPARTMENT CONTACTS

State Insurance Department
Commissioner: **Todd E. Kiser**
State Office Building – Room 3110
Salt Lake City, UT 84114-6901

Phone: (801) 538-3800
Fax: (801) 538-3829
Internet: www.insurance.utah.gov

Department Contacts:

Agent/Agency Licensing	(801) 538-3645
Life Insurance Division	(801) 538-3816

STATE BAR CONTACTS

Utah State Bar
Executive Director: **John Baldwin**
645 South 200 East
Salt Lake City, UT 84111

Phone: (801) 531- 9077
Fax: (801) 531-0660
Internet: www.utahbar.org

REGULATORY SUMMARY

Legal expense insurance may be transacted alone or together with life, accident and health, or casualty insurance ([Utah Code, Section 31A-22-1101](#)).

Insurance Department Policy

The Department has adopted guidelines concerning the “limited benefit” exemption and determines whether prepaid plans constitute the business of insurance on a case-by-case basis. In making such a determination, the Department considers the bearing of risk and whether the policy provides for indemnification.

Insurance Bulletin 87-3 sets out requirements for the licensing of agents who sell prepaid legal insurance plans.

LAWYER ETHICS RULES

The Utah Supreme Court amended their Rules of Professional Conduct, effective November 2005. The changes bring the Utah Rules closer to the ABA Model Rules in many cases.

GLSA REGULATION REPORTER STATE LISTING

UTAH

Links to Selected Text
State Statutes, Regulations, Attorney General Opinions, Etc.
Utah Insurance Code: Chapter 1, Part I – Purposes, Scope and Application See 31A-1-103
Utah Insurance Code: Chapter 1, Part III -- Definitions See 31A-1-301(99)
Utah Insurance Code: Chapter 22, Part XI -- Legal Expense Insurance – 31A-22-1101 & 1102
Utah Insurance Rules -
Lawyer Ethics Rules and Opinions
Rule of Professional Conduct 1.18: Duties to a Prospective Client
Rule of Professional Conduct 5.4: Professional Independence of a Lawyer
Rule of Professional Conduct 7.1: Communications Concerning Services of a Lawyer or Persons Professionally Associated with the Lawyer
Rule of Professional Conduct 7.2: Advertising
Rule of Professional Conduct 7.3: Personal Contact with Prospective Clients
Ethics Advisory Opinion Committee Opinion No. 02-02 – may a lawyer send newsletters and alerts to clients and prospective clients Opinion No. 07-01 – lawyer purchases referrals generated from membership base Opinion No. 13-02 – referrals, joint marketing and business referrals questions Opinion No. 14-02 – percentage payments to non-lawyer marketer Opinion No. 14-04 – ethical limits in participating with ratings systems such as SuperLawyer and Best Lawyer Opinion No. 15-05 – ethical limits on paying internet service a fee to bid on potential legal work.

GLSA REGULATION REPORTER STATE LISTING

VERMONT

INSURANCE DEPARTMENT CONTACTS

State of Vermont – Department of Financial
Regulation

Department Commissioner: ***Susan L. Donegan***

Deputy Commissioner – Insurance Division:
Kaj Samsom

89 Main Street – Drawer 20
Montpelier, VT 05620-3101

Phone: (802) 828-3301

Fax: (802) 828-3306

Internet: <http://www.dfr.vermont.gov/>

STATE BAR CONTACTS

Vermont Bar Association

Executive Director: ***Robert M. Paolini***

35-37 Court Street

P.O. Box 100

Montpelier, VT 05601-0100

Phone: (802) 223-2020

Fax: (802) 223-1573

Internet: www.vtbar.org

REGULATORY SUMMARY

Generally, all prepaid legal services plans are considered insurance and regulated as a form of miscellaneous casualty insurance. However, group legal services employee benefit plans are exempt from the state insurance laws to the extent that the federal ERISA statute preempts state regulation.

The Division of Insurance reviews plans to determine that they are not misleading or deceptive.

LAWYER ETHICS RULES

Vermont has adopted ethics rules that are based on the ABA Model Rules of Professional Conduct.

The Supreme Court amended the Rules of Professional conduct effective September 1, 2009.

GLSA REGULATION REPORTER STATE LISTING

VERMONT

Links to Selected Text
State Statutes, Regulations, Attorney General Opinions, Etc.
Lawyer Ethics Rules and Opinions
Rules on line with lexisnexis scroll down near bottom of list
Ethics opinions on VTBar site, listed in chronological order
Rule of Professional Conduct 1.18: Duties to Prospective Client
Rule of Professional Conduct 5.4: Professional Independence of a Lawyer
Rule of Professional Conduct 7.1: Communications Concerning a Lawyer's Services
Rule of Professional Conduct 7.2: Advertising
Rule of Professional Conduct 7.3: Regulation of Solicitation
Ethics Opinion 2000-4: Web site as Advertising

GLSA REGULATION REPORTER STATE LISTING

VIRGINIA

INSURANCE DEPARTMENT CONTACTS

Virginia State Corporation Commission –
Bureau of Insurance
Commissioner: **Jacqueline K. Cunningham**
Tyler Building
1300 East Main Street
Richmond, VA 23219

Phone: (804) 371-9741
Fax: (804) 371-9873
Internet: www.scc.virginia.gov/division/boi

Bureau Contacts:

Agent Licensing: (804) 371-9631
Market Conduct (Life & Health): (804) 371-9532
Form/Rate Filings (Life & Health): (804) 371-9110

STATE BAR CONTACTS

Virginia State Bar
Executive Director: **Karen A. Gould**
1111 East Main Street – Suite 700
Richmond, VA 23219-3565

Phone: (804) 775-0500
Fax: (804) 775-0501
Internet: www.vsb.org

REGULATORY SUMMARY

Insurance Statutes:

The Bureau licenses, regulates, investigates and examines insurance companies, agencies and agents on behalf of the citizens of the Commonwealth of Virginia. [Chapter 44 of Title 38.2](#) addresses legal services plans. It establishes definitions, as well as rate and policy requirements.

Except for plans that are sponsored by the Virginia State Bar, all participating providers in a plan are jointly and severally liable on all contracts made for the purposes of the plan. Even when a participating provider resigns from a plan, he or she continues to be liable on each subscription contract while effective or to the end of the contract's current contract year.

Virginia Code Sections [38.2-127](#) and [38.2-2300](#) allow for the writing of legal services insurance. The distinguishing feature between legal services plans and insurance is indemnification.

FILING REQUIREMENTS

Annual statements must be filed with the [State Corporation Commission](#), as well as quarterly reports at the request of the Commission.

LAWYER ETHICS RULES

The [Virginia Rules of Professional Conduct](#) combine elements of the ABA Model Rules of Professional Conduct and its predecessor, the Model Code of Professional Responsibility.

GLSA REGULATION REPORTER STATE LISTING

VIRGINIA

Links to Selected Text
State Statutes, Regulations, Attorney General Opinions, Etc.
Code of Virginia: Title 38.2 Insurance, Chapter 1 - General Provisions Legal Services Insurance
Code of Virginia: Title 38.2 Insurance, Chapter 3 - Provisions Relating to Insurance Policies & Contracts
Code of Virginia: Title 38.2 Insurance, Chapter 5 - Unfair Trade Practices
Code of Virginia: Title 38.2 Insurance, Chapter 23 - Legal Services Insurance
Code of Virginia: Title 38.2 Insurance, Chapter 44 - Legal Services Plans
Lawyer Ethics Rules and Opinions
Rule of Professional Conduct 1.18: Duties to Prospective Client
Rule of Professional Conduct 5.4: Professional Independence of a Lawyer
Rule of Professional Conduct 7.1: Communications Concerning a Lawyer's Services Revised effective July 1, 2013.
Rule of Professional Conduct 7.2: Advertising Deleted effective July 1, 2013
Rule of Professional Conduct 7.3: Direct Contact with Prospective Clients
Virginia State Bar Standing Committee on Lawyer Advertising and Solicitation A-0110 4/14/98 Internet Advertising 1750 3/20/01 Advertising Issues 1791 12/22/03 Ethics of Email instead of Face to Face Meetings 1872 3/39/13 Virtual Office and Executive Office Suites 1874 7/28/2014 Limited Scope Representation

GLSA REGULATION REPORTER STATE LISTING *VIRGINIA*

Selected Text: Ethics Opinions Virginia State Bar Standing Committee on Lawyer Advertising and Solicitation

Lawyer Advertising Opinion A-0110

LAWYER ADVERTISING ON THE INTERNET

Question Presented: A question has been raised as to how the current advertising and solicitation rules apply to lawyer advertising and solicitation over the Internet.

Opinion: Many thousands of lawyers regularly use the Internet to communicate and market their services. The Internet is a global network of computers which send and receive data over telephone lines and cable. Law firms have websites or “homepages” on the Internet which convey information about the firm, its lawyers, its areas of practice and some even provide legal information. A person visiting a law firm’s home page can send electronic mail (e-mail) messages to the law firm or ask questions. Lawyers can also post advertisements in newsgroups and communicate about their services in chat rooms.

It is the Committee’s opinion that a Virginia lawyer advertising on the Internet is subject to applicable disciplinary rules in the Virginia Code of Professional Responsibility. Thus, for example, DR 2-101(A)’s prohibition of advertising which is false, fraudulent, deceptive or misleading applies to all “public communications” including communications over the Internet.

The Committee observes that a lawyer’s communications over the Internet are “disseminated to the public by use of electronic media” for which the lawyer has given value and therefore are subject to the requirements of DR 2-101(B). This means that a lawyer or law firm that advertises on the Internet must make and preserve for at least one year a hard copy of any advertisement posted on the Internet. This includes advertisements in the form of home pages, postings to bulletin boards, newsgroups, usenets, telnets, etc.

The Committee observes that not all of the disciplinary rules which apply to lawyer advertising via other media will apply to lawyer advertising over the Internet, and therefore it may be necessary for the Committee to issue further opinions on this subject as new questions arise. However, to the extent that existing rules can be applied to lawyer advertising over the Internet, lawyers must comply with such rules. Other jurisdictions have reached the same conclusion. See, e.g., Iowa Ethics Opinion 95-21 (1996) (lawyers who have home pages must comply with rules on advertising including publication of required disclaimers); Pennsylvania Ethics Opinion 96-17 (1996) (communications on the Internet about lawyers’ services are subject to ethics rules regarding advertising); South Carolina Ethics Opinion 94-27 (1995) (lawyer advertising on the Internet is subject to state’s rules regarding advertising).

Lawyers who communicate on the Internet in “real time” chat rooms must abide by the restrictions on solicitation set forth in DR 2-103. “In-person” communication in personal injury and wrongful death cases is prohibited, subject to certain exceptions, by DR 2-103(F). “In-person” communications include not only face to face communication but also “telephonic communication.” The Committee believes that a lawyer who solicits employment in a “real time” chat room may not solicit employment in personal injury or wrongful death cases by communicating with the victim or their immediate family.

Committee Opinion
April 14, 1998

GLSA REGULATION REPORTER STATE LISTING WASHINGTON

INSURANCE DEPARTMENT CONTACTS

Washington Department of Insurance
Insurance Commissioner: **Mike Kreidler**
5000 Capitol Blvd.
Tumwater, WA 98501

Phone: (360) 725-7000
Fax: (360) 586-3535
Internet: www.insurance.wa.gov

Seattle Office:
810 3rd Avenue – Suite 650
Seattle, WA 98104
Phone: (206) 464-6263

Spokane Office:
One Rock Pointe
1212 North Washington St., Suite 106
Spokane, WA 99201
Phone: (509) 625-5251

Department Contacts:

Agent & Broker Licensing: (360) 725-7144
Property/Casualty Rates & Forms:
(360) 725-7111

STATE BAR CONTACTS

Washington State Bar Association
Executive Director: **Paula Littlewood**
2101 Fourth Avenue – 4th Floor
Seattle, WA 98121-2330

Phone: (206) 443-9722
Fax: (206) 727-8319
Internet: www.wsba.org

INSURANCE DEPARTMENT POLICY

The Insurance Commissioner's office has responsibility for regulating all insurance business in Washington under the authority granted by the insurance laws under Chapter 48. The Department of Insurance regulates prepaid plans offered by insurance companies under the miscellaneous casualty section of the insurance code.

Prepaid plans offered by non-insurers may constitute the business of insurance. The Commissioner reviews each plan on a case-by-case basis to determine whether the plan constitutes an "insurance" product. Only pure access plans are not regarded and regulated as insurance products. The determinative elements are risk pooling and risk transferring.

FILING REQUIREMENTS

As required by the [Department of Insurance](#) if the plan constitutes an "insurance" product.

LAWYER ETHICS RULES

The [Washington State Bar Association](#) is an administrative arm of the Washington State Supreme Court. It administers the admissions, licensing, and discipline functions for the lawyers in the State of Washington.

The Court approved new [Rules of Professional Conduct](#) effective September 1, 2006. The Rules follow the ABA Model Rules with some exceptions noted in the comments.

Rules were amended in 2015 to allow Limited Licensed Legal Technicians. Click [here](#) for more information.

GLSA REGULATION REPORTER STATE LISTING WASHINGTON

Links to Selected Text
State Statutes, Regulations, Attorney General Opinions, Etc.
Lawyer <u>Ethics Rules</u> and <u>Opinions</u>
For ethics rules, click on the link above and scroll to the appropriate rule.
Rule of Professional Conduct 1.18: Duties to Prospective Clients Comments amended 4/15/15
Rule of Professional Conduct 5.4: Professional Independence of a Lawyer Comments amended 4/15/15
Rule of Professional Conduct 7.1: Communications Concerning a Lawyer's Services
Rule of Professional Conduct 7.2: Advertising Rule and Comments amended 4/15/15
Rule of Professional Conduct 7.3: Direct Contact with Prospective Clients Rule and Comments amended 4/15/15
Selected Ethics Opinions 1508 - 1992 – participation with legal services plan 1916 - 2000 – participation with internet estate planning document preparation 1947 - 2001 – participation with for-profit internet plan 1978 - 2002 – participation with for-profit prepaid plan 2153 - 2007 – legal services as part of for-profit real estate package 2227 - 2012 – fee sharing with national not-for-profit referral organization

GLSA REGULATION REPORTER STATE LISTING

WEST VIRGINIA

INSURANCE DEPARTMENT CONTACTS

West Virginia Insurance Commission
Insurance Commissioner: **Michael D. Riley**
1124 Smith Street
Charleston, WV 25301

Phone: (304) 558-3354
Fax: (304) 558-3725
Internet: www.wvinsurance.gov/

Department Contacts:

Agent Licensing & Education (304)558-0610
Financial Conditions (304)558-2100
Rates & Forms (304)558-2094

STATE BAR CONTACTS

The West Virginia State Bar (unified)
Executive Director: **Anita R. Casey**
2000 Deitrick Boulevard
Charleston, WV 25311-1231

Phone:(304) 553-7220
Fax: (304) 558-2467
Internet: www.wvbar.org

West Virginia Bar Association (voluntary)
Executive Director: **Pryce M. Haynes II**
P.O. Box 2162
Huntington, WV 25722
Phone:(304) 399-1099
Fax: (304) 522-2795
Internet: www.wvbarassociation.org/

REGULATORY SUMMARY

Prepaid legal services are regulated under miscellaneous casualty insurance in West Virginia.

INSURANCE DEPARTMENT POLICY

In reviewing proposed plans, the [Department of Insurance](#) looks to see if indemnification or assumption of risk is a component. An Attorney General Opinion used that basis to hold that the West Virginia Bar Association's proposed Prepaid Legal Services Plan did not fall within the purview of the insurance statutes.

FILING REQUIREMENTS

If a plan is deemed insurance, the filing requirements can be found in [Chapter 33](#). They are also set out on the Insurance Commission's web page.

LAWYER ETHICS RULES

In 2014 the West Virginia Supreme Court amended their ethics rules, effective January 1, 2015. A red-lined version is available [here](#).

GLSA REGULATION REPORTER STATE LISTING
WEST VIRGINIA

Links to Selected Text

State Statutes, Regulations, Attorney General Opinions, Etc

[West Virginia Code: Chapter 33, Article 1 – Insurance](#)

[State of West Virginia - Office of the Attorney General- Opinion Date November 29, 1977](#)

Lawyer Ethics Rules and Opinions

[Rule of Professional Conduct 1.18: Duties to Prospective Client](#)

[Rule of Professional Conduct 5.4: Professional Independence of a Lawyer](#)

[Rule of Professional Conduct 7.1: Communications Concerning a Lawyer's Services](#)

[Rule of Professional Conduct 7.2: Advertising](#)

[Rule of Professional Conduct 7.3: Solicitation of Clients](#)

West Virginia Lawyer Disciplinary Board

[L.E.I. 97-03 -- Attorney Participation in Prepaid Legal Services Plans](#)

[L.E.I. 98-03 -- Attorney Advertising on the Internet](#)

[LEI 2012-01 – Use of Electronic Media for file storage](#)

GLSA REGULATION REPORTER STATE LISTING

WEST VIRGINIA

Office of the Attorney General
State of West Virginia

November 29, 1977

PREPAID LEGAL SERVICES:

The West Virginia State Bar Association's proposed Prepaid Legal Services Plan does not fall within the purview of the insurance statutes in that such plan provides services at a flat fee and does not indemnify another or pay a specified amount upon determinable contingencies.

The Honorable William T. Brotherton, Jr.
President of the Senate
West Virginia Legislature
State Capitol
Charleston, West Virginia 25305

Dear Senator Brotherton:

In response to your request for an opinion as to whether the West Virginia State Bar's proposed Prepaid Legal Services Plan constitutes "insurance" under Chapter 33, Article 1, Section 1, of the West Virginia Code of 1931, as amended, I have reviewed the draft of the plan and the applicable statutes and it is my belief that the proposed plan does not fall within the purview of the West Virginia insurance statutes. This conclusion is based upon the following:

Code 33-1-1 defines insurance as a "contract whereby one undertakes to indemnify another or to pay a specified amount upon determinable contingencies."

The essential purpose and scope of these statutes is to assure that the public is protected from fiscally unsound, fraudulent or unprofessional actions by insurance companies.

While this plan is in the nature of insurance, it does not undertake to "indemnify another or to pay a specified amount." The plan provides professional services, sought voluntarily, at a flat fee instead of reimbursement for material losses or expenses necessitated by determinable contingencies.

Under this plan, there is no risk of inadequate coverage since only one flat fee is charged for all services. Actuarial risks are nonexistent.

Finally, the rendering of services under the plan does not depend upon the happening of "determinable contingencies." The services are available for the full spectrum of legal problems and are not dependent upon any fortuitous event.

The West Virginia Supreme Court of Appeals has paved the way for this plan by amending the Code of Professional Responsibility on October 31, 1977 to allow for such a system. Further, the highest court in the State of New York has held that a similar plan did not constitute insurance. *Feinstein v. Attorney General*, 36 N.Y.2d 199, 326 N.E.2d 288 (1975).

Viewed in its entirety, the plan is an agreement to provide services. It is not an agreement to indemnify another for such services, i.e., it is not designed to reimburse an insured in cash for those expenses incurred by him pursuant to his use of such services.

GLSA REGULATION REPORTER STATE LISTING
WEST VIRGINIA

I, therefore, conclude that this plan may be put into operation without the necessity for amendment to Chapter 33 of the Code.

Very truly yours,
Chauncey H. Browning, Jr., Attorney General

GLSA REGULATION REPORTER STATE LISTING

WISCONSIN

INSURANCE DEPARTMENT CONTACTS

Office of the Commissioner of Insurance
Commissioner: **Ted Nickel**
125 South Webster Street
Madison, WI 53702

Phone:(608) 266-3585
Fax: (608) 266-9935
Internet: <http://oci.wi.gov/>

STATE BAR CONTACTS

State Bar of Wisconsin
Executive Director: **George Brown**
5302 Eastpark Boulevard
Madison, WI 53718-2101

Phone:(608) 257-3838
(800) 728-7788
Fax: (608) 257-5502
Internet: www.wisbar.org

REGULATORY SUMMARY

The [Wisconsin Administrative Code](#) defines legal expense insurance as a “contractual obligation to provide specific legal services or to reimburse for specific legal services in consideration of specified payment for an interval of time...” ([Chapter 22.01\(5\)\(c\)](#)) and places legal expense insurance under the umbrella of property/casualty insurance products.

Certain plans are subject to less stringent regulation, including plans whose benefits are limited to advice and consultation, and the preparation of simple wills, powers of attorney and other types of routine legal documents. The annual cost of such plans may not exceed \$200 per contract holder (see [Chapter 22.03](#)).

FILING REQUIREMENTS

Under Administrative Code [Chapter 22.03](#), annual filing is required. In addition, individuals serving as provider attorneys must file a report with the State Bar by January 31st of each year.

LAWYER ETHICS RULES

[Supreme Court Rule](#) 11.06 regulates lawyers’ participation in group and prepaid legal services plans.

The Court has finished revisions to the Supreme Court Rules, and the new rules were effective July 1, 2007, with updates in 2009 and 2011.

GLSA REGULATION REPORTER STATE LISTING

WISCONSIN

Links to Selected Text
State Statutes, Regulations, Attorney General Opinions, Etc.
<u>Wisconsin Administrative Code: Chapter 6: Classifications of Insurance</u>
<u>Wisconsin Administrative Code: Chapter 22: Legal Expense Insurance</u>
<u>Lawyer Ethics Rules and Opinions</u> <u>Ethics Opinions</u> are available <u>online</u> for Bar Members only
<u>Supreme Court Rule 11.06: Group or Prepaid Legal Services Plans</u>
Supreme Court Rule 20:1.18: Duties to Prospective Clients
Supreme Court Rule 20:5.4: Professional Independence of a Lawyer
Supreme Court Rule 20:7.1: Communications Concerning a Lawyer's Services
Supreme Court Rule 20:7.2: Advertising
Supreme Court Rule 20:7.3: Direct Contact with Prospective Clients

GLSA REGULATION REPORTER STATE LISTING

WYOMING

Insurance Department Contacts

Wyoming Insurance Department
Insurance Commissioner: **Tom Glause**
106 East 6th Avenue
Cheyenne, WY 82002.

Phone: (307) 777-7401
(800) 438-5768 (in state)
Fax: (307) 777-5895
Internet: <http://insurance.state.wy.us/>

State Bar Contacts

Wyoming State Bar
Executive Director: **Sharon Wilkinson**
4124 Laramie St.
Cheyenne, WY 82001

Phone: (307) 632-9061
Fax: (307) 632-3737
Internet: www.wyomingbar.org/

Regulatory summary

The [Wyoming Insurance Department](#) is responsible for regulating the business of insurance in the state.

Insurance department policy

Prepaid legal services are regulated as a casualty insurance product in Wyoming. Most prepaid legal service plans are considered insurance. However, on a case by case basis, plans may not be deemed insurance.

All contracts deemed insurance proposed for use in the state should be submitted to the commissioner for approval.

Filing Requirements

Annual filings are required by title 26. All forms are available for [downloading](#) from the department of insurance web page.

Lawyer Ethics Rules

The [Wyoming State Bar](#) regulates the practice of law in the state, facilitates the provision of legal services to the public and assists attorneys in the professional practice of law.

New rules of Professional Conduct were adopted August 5, 2014, effective October 6, 2014.

GLSA REGULATION REPORTER STATE LISTING

WYOMING

State Statutes, Regulations, Attorney General Opinions, Etc.
Wyoming Statutes: Title 26 - Insurance Code
Wyoming Insurance Regulations – 2295 Marketers
Lawyer Ethics Rules And Opinions
Rule Of Professional Conduct 1.18: Duties To Prospective Client
Rule Of Professional Conduct 5.4: Professional Independence Of A Lawyer
Rule Of Professional Conduct 7.1: Communications Concerning A Lawyer's Services
Rule Of Professional Conduct 7.2: Advertising
Rule Of Professional Conduct 7.3: Solicitation Or Communication With Prospective Clients
In Wyoming, neither the board of professional responsibility (of the Wyoming state bar) nor the Wyoming supreme court issues ethics opinions. Mark Gifford, Bar Counsel, welcomes calls and e-mail inquiries about any ethical questions and concerns. Please contact him at (307) 432-2106 or by e-mail at mgifford@wyobc.org . Advice given by Bar Counsel via the Ethics Hotline is non-binding and intended only to be informational. However, reliance on telephonic advice may be considered as mitigating in a disciplinary proceeding.

GLSA REGULATION REPORTER – FEDERAL MATERIALS

UNITED STATES CODE

TITLE 26. INTERNAL REVENUE CODE
SUBTITLE A--INCOME TAXES
CHAPTER 1--NORMAL TAXES AND SURTAXES
SUBCHAPTER B--COMPUTATION OF TAXABLE INCOME
PART III--ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

[§120. Amounts Received Under Qualified Group Legal Services Plans](#)

Code of Federal Regulations

Title 26, Volume 2

[26 CFR 1.120-3](#)

GLSA REGULATION REPORTER – FEDERAL MATERIALS

UNITED STATES CODE

TITLE 26. INTERNAL REVENUE CODE
SUBTITLE A--INCOME TAXES
CHAPTER 1--NORMAL TAXES AND SURTAXES
SUBCHAPTER F--EXEMPT ORGANIZATIONS
PART I--GENERAL RULE

§ 501. Exemption from Tax on Corporations, Certain Trusts, Etc.

Code of Federal Regulations

Title 26, Volume 7

CITE: 26CFR1.501(c)(9)-1

CITE: 26CFR1.501(c)(9)-2

CITE: 26CFR1.501(c)(9)-3

CITE: 26CFR1.501(c)(9)-4

CITE: 26CFR1.501(c)(9)-5

CITE: 26CFR1.501(c)(9)-6

CITE: 26CFR1.501(c)(9)-7

CITE: 26CFR1.501(c)(9)-8

Case Summaries and Citations

Bricklayers Benefit Plans of Delaware Valley, Inc. v. C.I.R., 1983, 81 T.C. 735

Section 501(c)(9) does not apply to an association of employee benefit welfare funds and pension funds organized for the purpose of administering their funds, despite their individual tax exempt status. In addition, the court held that the association did not qualify as a voluntary employees' beneficiary association, because it was not an association of "employees," in that the members were not individuals.

Canton Police Benev. Ass'n of Canton, Ohio v. U.S., N.D.Ohio 1987, 658 F.Supp. 411. *Aff'd* 844 F.2d 1231.

Congress did not intend to include retirements benefits in the exemption for voluntary employees' beneficiary associations, therefore association primarily providing members with retirement dividends was not entitled to tax exempt status.

American Ass'n of Christian Schools Voluntary Employees Beneficiary Ass'n Welfare Plan Trust v. U.S., M.D. Ala. 1987, 663 F.Supp. 275. *Aff'd* 850 F.2d 1510.

"Welfare plan" established to provide benefits to employees was not exempt from taxation under 501(c)(9), where employees had virtually no control over plan, trustees were not designated pursuant to collective bargaining agreement or any similar agreement, and plan did not meet, nor was subject to requirements of ERISA.

[Lima Surgical Associates, Inc. Voluntary Employees' Beneficiary Ass'n Plan Trust v. U.S. Cl.Ct. 1990, 20 Cl.Ct. 674, aff'd 944 F.2d 885.](#)

Voluntary employees' beneficiary association plan trust not tax-exempt because trust was not controlled by an independent trustee, the trust provided deferred compensation in the form of retirement benefits and the trust provided disproportionate benefits to officers, shareholders and highly compensated employees.

[CNG TRANSMISSION MANAGEMENT VEBA v. US, 588 F. 3d 1376](#)

Voluntary employees' beneficiary association ("VEBA") may not avoid the limitation on exempt function income in 26 U.S.C. § 512(a)(3)(E)(i) by allocating investment income to the payment of member benefits.

GLSA REGULATION REPORTER – FEDERAL MATERIALS

UNITED STATES CODE

TITLE 29. LABOR

CHAPTER 7--LABOR-MANAGEMENT RELATIONS

SUBCHAPTER IV--LIABILITIES & RESTRICTIONS ON LABOR & MANAGEMENT

[§ 186. Restrictions on Financial Transactions](#)

GLSA REGULATION REPORTER – FEDERAL MATERIALS

UNITED STATES CODE

TITLE 29. LABOR

CHAPTER 18--EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM

SUBCHAPTER I--PROTECTION OF EMPLOYEE BENEFIT RIGHTS

SUBTITLE B--REGULATORY PROVISIONS

PART 1--REPORTING AND DISCLOSURE

[§ 1021. Duty of Disclosure and Reporting](#)

[§ 1022. Summary Plan Description](#)

[§ 1023. Annual Reports](#)

[§ 1024. Filing and Furnishing of Information](#)

[§ 1025. Reporting of Participant's Benefit Right](#)

[§ 1026. Reports Made Public Information](#)

[§ 1027. Retention of Records](#)

[§ 1028. Reliance on Administrative Interpretations](#)

[§ 1029. Forms](#)

[§ 1030. Alternative Methods of Compliance](#)

[§ 1031. Repeal and Effective Date](#)

CHAPTER XXV--PENSION AND WELFARE BENEFITS ADMINISTRATION, DEPARTMENT OF LABOR

PART 2520--RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

[Subpart A – General Reporting and Disclosure Requirements](#)

[Subpart B – Contents of Plan Descriptions and Summary Plan Descriptions](#)

[Subpart C – Annual Report Requirements](#)

[Subpart D – Provisions Applicable to both Reporting and Disclosure Requirements](#)

[Subpart E – Reporting Requirements](#)

[Subpart F – Disclosure Requirements](#)

[Subpart G – Recordkeeping Requirements](#)

**CHAPTER XXV--PENSION AND WELFARE BENEFITS ADMINISTRATION,
DEPARTMENT OF LABOR**

PART 2550--RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

- 2550.401c-1 Definition of "plan assets"--insurance company general accounts.
- 2550.403a-1 Establishment of trust.
- 2550.403b-1 Exemptions from trust requirement.
- 2550.404a-1 Investment duties.
- 2550.404b-1 Maintenance of the indicia of ownership of plan assets outside the jurisdiction of the district courts of the United States.
- 2550.404c-1 ERISA section 404(c) plans.
- 2550.407a-1 General rule for the acquisition and holding of employer securities and employer real property.
- 2550.407a-2 Limitation with respect to the acquisition of qualifying employer securities and qualifying employer real property.
- 2550.407a-3 – 2550.407a-4 Reserved
- 2550.407c-3 Reserved
- 2550.407d-5 Definition of the term "qualifying employer security"
- 2550.407d-6 Definition of the term "employee stock ownership plan".
- 2550.408b-1 General statutory exemption for loans to plan participants and beneficiaries who are parties in interest with respect to the plan.
- 2550.408b-2 General statutory exemption for services or office space.
- 2550.408b-3 Loans to Employee Stock Ownership Plans.
- 2550.408b-4 Statutory exemption for investments in deposits of banks or similar financial institutions.
- 2550.408b-6 Statutory exemption for ancillary services by a bank or similar financial institution.
- 2550.408c-2 Compensation for services.
- 2550.408e Statutory exemption for acquisition or sale of qualifying employer securities and for acquisition, sale, or lease of qualifying employer real property.
- 2550.412-1 Temporary bonding requirements.

**CHAPTER XXV--PENSION AND WELFARE BENEFITS ADMINISTRATION,
DEPARTMENT OF LABOR**

**PART 2560--RULES AND REGULATIONS FOR ADMINISTRATION AND
ENFORCEMENT**

- 2560.502-1 Requests for enforcement pursuant to section 502(b)(2).
- 2560.502c-2 Civil penalties under section 502(c)(2).
- 2560.502c-5 Civil penalties under section 502(c)(5).
- 2560.502c-6 Civil Penalties under section 502(c)(6)
- 2560.502c-7 Civil penalties under section 502(c)(7)
- 2560.502i-1 Civil penalties under section 502(i).
- 2560.503-1 Claims procedure.

GLSA REGULATION REPORTER – FEDERAL MATERIALS

UNITED STATES CODE

TITLE 29. LABOR

CHAPTER 18--EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM

SUBCHAPTER I--PROTECTION OF EMPLOYEE BENEFIT RIGHTS

SUBTITLE B--REGULATORY PROVISIONS

PART 1--REPORTING AND DISCLOSURE

[§ 1021. Duty of Disclosure and Reporting](#)

[§ 1022. Summary Plan Description](#)

[§ 1023. Annual Reports](#)

[§ 1024. Filing and Furnishing of Information](#)

[§ 1025. Reporting of Participant's Benefit Right](#)

[§ 1026. Reports Made Public Information](#)

[§ 1027. Retention of Records](#)

[§ 1028. Reliance on Administrative Interpretations](#)

[§ 1029. Forms](#)

[§ 1030. Alternative Methods of Compliance](#)

[§ 1031. Repeal and Effective Date](#)

CHAPTER XXV--PENSION AND WELFARE BENEFITS ADMINISTRATION, DEPARTMENT OF LABOR

PART 2520--RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

[Subpart A – General Reporting and Disclosure Requirements](#)

[Subpart B – Contents of Plan Descriptions and Summary Plan Descriptions](#)

[Subpart C – Annual Report Requirements](#)

[Subpart D – Provisions Applicable to both Reporting and Disclosure Requirements](#)

[Subpart E – Reporting Requirements](#)

[Subpart F – Disclosure Requirements](#)

[Subpart G – Recordkeeping Requirements](#)

**CHAPTER XXV--PENSION AND WELFARE BENEFITS ADMINISTRATION,
DEPARTMENT OF LABOR**

PART 2550--RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

- 2550.401c-1 Definition of ``plan assets"--insurance company general accounts.
- 2550.403a-1 Establishment of trust.
- 2550.403b-1 Exemptions from trust requirement.
- 2550.404a-1 Investment duties.
- 2550.404b-1 Maintenance of the indicia of ownership of plan assets outside the jurisdiction of the district courts of the United States.
- 2550.404c-1 ERISA section 404(c) plans.
- 2550.407a-1 General rule for the acquisition and holding of employer securities and employer real property.
- 2550.407a-2 Limitation with respect to the acquisition of qualifying employer securities and qualifying employer real property.
- 2550.407a-3 – 2550.407a-4 Reserved
- 2550.407c-3 Reserved
- 2550.407d-5 Definition of the term ``qualifying employer security"
- 2550.407d-6 Definition of the term ``employee stock ownership plan".
- 2550.408b-1 General statutory exemption for loans to plan participants and beneficiaries who are parties in interest with respect to the plan.
- 2550.408b-2 General statutory exemption for services or office space.
- 2550.408b-3 Loans to Employee Stock Ownership Plans.
- 2550.408b-4 Statutory exemption for investments in deposits of banks or similar financial institutions.
- 2550.408b-6 Statutory exemption for ancillary services by a bank or similar financial institution.
- 2550.408c-2 Compensation for services.
- 2550.408e Statutory exemption for acquisition or sale of qualifying employer securities and for acquisition, sale, or lease of qualifying employer real property.
- 2550.412-1 Temporary bonding requirements.

**CHAPTER XXV--PENSION AND WELFARE BENEFITS ADMINISTRATION,
DEPARTMENT OF LABOR**

**PART 2560--RULES AND REGULATIONS FOR ADMINISTRATION AND
ENFORCEMENT**

- 2560.502-1 Requests for enforcement pursuant to section 502(b)(2).
- 2560.502c-2 Civil penalties under section 502(c)(2).
- 2560.502c-5 Civil penalties under section 502(c)(5).
- 2560.502c-6 Civil Penalties under section 502(c)(6)
- 2560.502c-7 Civil penalties under section 502(c)(7)
- 2560.502i-1 Civil penalties under section 502(i).
- 2560.503-1 Claims procedure.

GLSA REGULATION REPORTER – FEDERAL MATERIALS

UNITED STATES CODE

TITLE 29. LABOR

CHAPTER 18--EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM

SUBCHAPTER I--PROTECTION OF EMPLOYEE BENEFIT RIGHTS

SUBTITLE B--REGULATORY PROVISIONS

PART 4--FIDUCIARY RESPONSIBILITY

- § 1101. Coverage
- § 1102. Establishment of Plan
- § 1103. Establishment of Trust
- § 1104. Fiduciary Duties
- § 1105. Liability for Breach of Co-Fiduciary
- § 1106. Prohibited Transactions
- § 1107. Limitation with Respect to Acquisition and Holding of Employer Securities and Employer Real Property by Certain Plans
- § 1108. Exemptions from Prohibited Transactions
- § 1109. Liability for Breach of Fiduciary Duty
- § 1110. Exculpatory Provisions; Insurance
- § 1111. Persons Prohibited from Holding Certain Positions
- § 1112. Bonding
- § 1113. Limitation of Actions
- § 1114. Effective Date

GLSA REGULATION REPORTER – FEDERAL MATERIALS

UNITED STATES CODE

TITLE 29. LABOR

CHAPTER 18--EMPLOYEE RETIREMENT INCOME SECURITY PROGRAM

SUBCHAPTER I--PROTECTION OF EMPLOYEE BENEFIT RIGHTS

SUBTITLE B--REGULATORY PROVISIONS

PART 5--ADMINISTRATION AND ENFORCEMENT

§ 1131. Criminal Penalties

§ 1132. Civil Enforcement

§ 1133. Claims Procedure

§ 1134. Investigative Authority

§ 1135. Regulations

§ 1136. Coordination and Responsibility of Agencies Enforcing this Subchapter and Related Federal Laws

§ 1137. Administration

§ 1138. Appropriations

§ 1139. Separability

§ 1140. Interference with Protected Rights

§ 1141. Coercive Interference

§ 1142. Advisory Council on Employee Welfare and Pension Benefit Plans

§ 1143. Research, Studies, and Reports

§ 1143a. Studies by Comptroller General

§ 1144. Other Laws

§1144a Clarification Of Church Welfare Plan Status Under State Insurance Law.

§ 1145. Delinquent Contributions

§1146. Outreach to promote retirement income savings

§1147. National Summit on Retirement Savings

§1148. Authority to postpone certain deadlines by reason of Presidentially declared disaster or terroristic or military actions

CODE OF FEDERAL REGULATIONS
TITLE 29--LABOR
SUBTITLE B--REGULATIONS RELATING TO LABOR
CHAPTER XXV--EMPLOYEE BENEFITS SECURITY ADMINISTRATION, DEPARTMENT OF
LABOR
SUBCHAPTER A--GENERAL
PART 2509--INTERPRETIVE BULLETINS RELATING TO THE EMPLOYEE RETIREMENT
INCOME SECURITY ACT OF 1974

- § 2509.08-1 Supplemental guidance relating to fiduciary responsibility in considering economically targeted investments
- § 2509.08-2 Interpretive bulletin relating to the exercise of shareholder rights and written statements of investment policy, including proxy voting policies or guidelines.
- § 2509.75-2 Interpretive bulletin relating to prohibited transactions.
- § 2509.75-3 Interpretive Bulletin Relating To Investments By Employee Benefit Plans In Securities Of Registered Investment Companies.
- § 2509.75-4 Interpretive Bulletin Relating To Indemnification Of Fiduciaries.
- § 2509.75-5 Questions And Answers Relating To Fiduciary Responsibility.
- § 2509.75-6 Interpretive Bulletin Relating To Section 408(C)(2) Of The Employee Retirement Income Security Act Of 1974.
- § 2509.75-7 Reserved
- § 2509.75-8 Questions And Answers Relating To Fiduciary Responsibility Under The Employee Retirement Income Security Act Of 1974.
- § 2509.75-9 Interpretive Bulletin Relating To Guidelines On Independence Of Accountant Retained By Employee Benefit Plan.
- § 2509.75-10 Interpretive Bulletin Relating To The ERISA Guidelines And The Special Reliance Procedure.
- Sec. 2509.78-1 Interpretive bulletin relating to payments by certain employee welfare benefit plans.
- Sec. 2509.94-1 Interpretive bulletin relating to the fiduciary standard under ERISA in considering economically targeted investments.
- Sec. 2509.94-3 Interpretive bulletin relating to in-kind contributions to employee benefit plans.
- Sec. 2509.95-1 Interpretive bulletin relating to the fiduciary standards under ERISA when selecting an annuity provider for a defined benefit pension plan.
- Sec. 2509.96-1 Interpretive bulletin relating to participant investment education.
- Sec. 2509.99-1 Interpretive Bulletin Relating to Payroll Deduction IRAs.

GLSA Regulation Reporter – Federal Cases

[Fletcher Bell v. ESBA, 437 F.Supp. 382 \(D. KS 1977\)](#)

Pre-emption

[Klamath Lake Pharmaceutical Ass'n v. Klamath Medical Service Bureau, 507 F.Supp. 980 \(D.OR 1981\)](#)

Anti-trust, Sherman Act

[Klamath Lake Pharmaceutical Ass'n v. Klamath Medical Service Bureau, 701 F.2d. 1276 \(9th Cir. 1983\)](#)

Anti-trust, Sherman Act

[Westchester Radiological Associates, P.C. v. Empire Blue Cross and Blue Shield, Inc., 659 F.Supp. 132 \(SD NY 1987\)](#)

Anti-trust, Sherman Act

[Blue Shield of Texas v. Royal Drug Co. Inc., 440 US 205 \(1979\)](#)

Sherman Act

[Goldfarb v. Virginia State Bar, 421 US 773 \(1975\)](#)

Sherman Act, Fee Schedule

[Parker v. Brown, 317 US 341 \(1942\)](#)

Marketing, Sherman Act

[FTC v. Ticor Title Insurance Company, 504 US 621 \(1992\)](#)

Anti-trust, *Parker* line of cases

[FTC v. Brown Shoe Co. Inc., 384 US 316 \(1966\)](#)

Anti-trust

[FTC v. Sperry & Hutchinson Co. 405 US 233 \(1972\)](#)

Anti-trust

[Shapero v. Kentucky Bar Ass'n, 486 US 466 \(1988\)](#)

Attorney Advertising

[Dole v. Milonas, 889 F.2d 885 \(9th Cir. 1989\)](#)

Attorney/Client privilege in Legal Plans

[Kastaros v. Cody, 568 F.Supp. 360 \(ED NY 1983\)](#)

Fiduciary Duty – Trustee

[Teamsters Local 282 Pension Trust Fund v. Angelos, 649 F.Supp. 1242 \(ND IL 1986\)](#)

Fiduciary Duty – Trustee

[Kastaros v. Cody, 744 F2d 270 \(2nd Cir. 1984\)](#)

Fiduciary Duty – Trustee

[Teamsters Local 282 Pension Trust Fund v. Angelos, 815 F.2d 452 \(7th Cir. 1987\)](#)

Fiduciary Duty – Trustee

[Teamsters Local 282 Pension Trust Fund v. Angelos, 839 F.2d 366 \(7th Cir. 1988\)](#)

Fiduciary Duty – Trustee

[Rush Prudential HMO, Inc., v. Moran, et al., 536 U.S. 355 \(2002\)](#)

ERISA

[Pegram et al. v. Herdrich 530 U.S. 211 \(2000\)](#)

Preemption and malpractice

[LaBarbera, et al. v. J.D Collyer Equipment Corp., and Plamo Leasing Corp., 337 F 3d 132, \(2nd Cir. 2003\)](#)

Trustees' Authority

[Boardman v. Prudential Insurance Company of America, 337 F 3d 9, \(1st Cir. 2003\)](#)

Arbitrary and capricious termination of benefits

*[Land v. Cigna Healthcare of Florida, 339 F 3d 1286, \(11th Cir. 2003\)](#) **REMANDED – See below**

Preemption and malpractice

Hatteberg v. Red Adair Co. Inc., Employees' Profit sharing plan and its Related trust, Not selected for publication 5th Cir (Tex.) Nov. 6, 2003, 2003 WL 22510848

Prohibited transactions; fiduciary duty; administrator's expenses

[Aetna Health Inc. v. Davila, 542 U.S. 200 \(2004\), 5th Cir. \(Tex.\), June 21, 2004](#)

Preemption

[Central Laborers' Pension Fund v. Heinz, 541 U.S. 739, 124 S.Ct. 2230 \(2004\)](#)

[303 F.3d 802, 7th Cir. \(Ill.\) Sept. 13, 2002.](#)

Anti-Cutback Rules

*[Land v. CIGNA Healthcare of Florida, 381 F.3d 1274, \(11th Cir. 2004\)](#)

Preemption and malpractice

[Sereboff et ux v. MidAtlantic Medical Services, Inc., 547 U.S. 356 \(2006\)](#)

Equitable relief, recovery from a third party

[Metropolitan Life Insurance Co., et al. v. Glenn \(554 U.S. ____ 2008\)](#)

Certiorari to the United States Court of Appeals for the Sixth Circuit

Argued April 23, 2008--Decided June 19, No. 06-923. 2008

Conflict of Interest

[Kennedy v. Plan Administrator for DuPont Savings and Investment Plan 129 S.Ct. 865 \(2009\)](#)

Certiorari to the United States Court of Appeals for the Fifth Circuit

Argued October 7, 2008—Decided January 26, 2009 No. 07-636

Primacy of ERISA Plan Documents

[Conkright v. Frommert \(No. 08-810\), 535 F.3d 111, reversed and remanded.](#)

Fiduciary's interpretation of plan language.

[Conkright v. Frommert –U.S.—Decided April 21, 2010](#)

Interpretation of plan language

[CNG TRANSMISSION MANAGEMENT VEBA v. US, 588 F. 3d 1376 \(2011\)](#)

Voluntary employees' beneficiary association ("VEBA") may not avoid the limitation on exempt function income in 26 U.S.C. § 512(a)(3)(E)(i) by allocating investment income to the payment of member benefits.

[CIGNA CORPORATION, v. AMARA \(No. 09-804\) 131 S.Ct. 1866 \(2011\)](#)

Argued November 30, 2010. Decided May 16, 2011.

Claim for equitable relief and finding that the terms of the Summary Plan Description are not the terms of the Plan.

[Amara v. CIGNA CORPORATION, Dist. Court, D. Connecticut 2012](#)

The Court again *sua sponte* stayed the judgment, to allow the parties to seek guidance from the Second Circuit.

Amara v. Cigna Corporation (Nos. 13-447-cv (Lead), 13-526 (XAP). Second Circuit Argued February 10, 2014. Decided December 23, 2014.

Ferreyra v. Fraternal Order of Police Legal Plan, Inc. No. 09-cv-1606 (RJL) United States District Court, District of Columbia. July 1, 2014.

Denial of benefits case.

Davis v. Drake, Case No. 3:14 CV 113 United States District Court, ND Ohio, Western Division, November 6, 2014.

Attorney Client Privilege - Legal Plan