

As of April 10, 2014

Legal Service Plan Requirements

Frequently Asked Questions

Q: What is a Legal Service Plan ("Plan")?

A: Hawaii law defines a Plan in Hawaii Revised Statutes ("HRS") § 488-1 as "any arrangement by which a person as defined in section 431:1-212, or entity, not otherwise authorized to engage in the practice of law, offers to provide or arranges for the provision of legal services in exchange for any valuable consideration that is paid to the plan."

HRS §431:1-212 defines "person" as "any individual, company, insurer, association, organization, group, reciprocal or interinsurance exchanges, partnership, business, trust, or corporation."

Q: How is a Plan different from Prepaid Legal Services?

A: "Legal Service Plans" were previously referred to as "Prepaid Legal Services" in chapter 488, HRS ("Chapter 488"), before Chapter 488 was amended by Act 186, Session Laws of Hawaii 2011 ("Act 186"). Act 186 took effect on July 5, 2011 and replaced all references to "Prepaid Legal Services" with "Legal Service Plans."

Q: Why was the law amended?

A: Act 186 updated Chapter 488 to enable the Commissioner to exert more effective oversight over Plans by strengthening registration, renewal, and bonding requirements. With the changes approved by Act 186 in 2011, Chapter 488 allows the Commissioner to better protect Hawaii consumers while more efficiently overseeing Plans.

Q: Who is required to register with the Commissioner as a Plan under Chapter 488?

A: All Plans must register with the Commissioner, unless:

1. The federal government or any federal agency is a party to the Plan;
2. It is an employer-employee plan that is subject to the federal Employee Retirement Income Security Act of 1974, Public Law 93-406 ("ERISA");
3. It is owned and operated by an insurance company subject to the Insurance Code (chapter 431, HRS). If this is the case, the insurance company must file a statement with the Commissioner certifying it is in compliance with the Insurance Code.

Q: What do I need to do if I want to register my company as a Plan in Hawaii?

A: Before you can conduct business in Hawaii, you must file the following with the Commissioner:

1. A completed Legal Service Plan Registration Form;
2. The following documentation:
 - A. A brief statement of the Plan's financial structure, including a statement of the amount of prepayment, other charges or dues to be paid by Plan members, and the manner in which the amounts are to be paid;
 - B. A statement of the amount of benefits, legal services, or reimbursement for legal services to be furnished each member of a Plan, and the period during which they will be furnished; and, if there are exceptions, reductions, exclusions, limitations, or restrictions of benefits, legal services, or reimbursements, a detailed statement of the exceptions, reductions, exclusions, limitations, or restrictions;
 - C. A statement of the terms and conditions upon which the Plan may be canceled or otherwise terminated by the group, the Plan Administrator, the persons furnishing legal services, or the member; provided that for any cancellation or termination other than by a member, there shall be provision made for the disposition of funds accumulated under the Plan;
 - D. A statement describing the applicability or nonapplicability of the benefits of the Plan to the family dependents of the member;
 - E. A statement of the period of grace that will be allowed the member or the member's group for making any payment due under the Plan;
 - F. A statement describing a procedure for settling disputes between or among the group, the Plan Administrator, the persons furnishing legal services, and the member;
 - G. A statement that the Plan includes the endorsements thereon and attached papers, if any, and contains the entire contract or contracts to be used among all parties to a Plan, including the executed written agreement between the Plan and any person providing legal services to the Plan; and
 - H. A listing of the owners, operators, officers, and Plan Administrator of the Plan, including the current business address, home address, mailing

address, business phone number, business fax number, business electronic mail address, business website address, and home phone number;

3. Registration fee:
 - A. \$1,000 for Certificates of Authority issued before July 1, 2014;
 - B. \$500 for Certificates of Authority issued after July 1, 2014;
4. Proof of \$100,000 bond or other evidence of security deemed appropriate by the Commissioner; and
5. Proof of Trustee Account located in Hawaii, if funds received are intended for payment to a person providing legal services.

The Commissioner will issue a Certificate of Authority for your Plan if the Commissioner finds that your company has met these requirements.

Q: What do we do if we want to make changes to our Plan or any documents used by the Plan or submitted to the Commissioner?

A: If your Plan anticipates making changes to the information provided in 2A through H in the previous question, your Plan must submit a written request to the Commissioner for approval of those changes at least 60 days before the intended effective date of the changes. Your proposed changes will not take effect until after the Commissioner has approved them.

Q: I was registered as a Prepaid Legal Services Plan before Act 186 was enacted in 2011. What do I need to do to make sure I comply with the new requirements?

A: Any Prepaid Legal Services Plan in existence before July 5, 2011 is no longer authorized to do business under Chapter 488. Any Plan wishing to sell legal services in Hawaii must submit all of the documents required in the previous question to the Commissioner.

Q: How often is a Plan required to renew its registration?

A: The Plan's Certificate of Authority is valid for a period of one year from the date of issue. To continue operating in Hawaii, a registered Plan must renew its registration annually.

To renew its registration, the Plan must submit the following with the Commissioner:

1. An income statement and balance sheet that has been compiled, reviewed, or audited by a certified public accountant within 60 days after the end of its fiscal year; and

2. Renewal fee:

A. \$1,000 per year for all services provided before July 1, 2014; and

B. \$500 per year for all services provided after July 1, 2014.

Q: Who is responsible for managing the Plan?

A: The Plan Administrator has discretionary authority for the management of the Plan or for the collection, management, or disbursement of Plan moneys.

Q: Does money used to pay for legal services remain in Hawaii?

A: Moneys paid to a Plan for legal services should be maintained at a federally-insured account with a bank, savings and loan association, or financial services loan company in Hawaii, unless otherwise approved by the Commissioner. The funds must be kept separate from the Plan's own funds or funds held by the Plan Administrator in any other capacity.

The law also specifically requires that no Plan promising or offering to pay for legal services equal to or more than \$25 per year must invest any of its assets other than as authorized and provided for domestic insurance companies and societies under chapter 431 and 432, HRS.

Q: Are there any bonding requirements for Plans operating in Hawaii?

A: Yes. The Plan Administrator must obtain a \$100,000 bond to be executed by the Plan Administrator and a company authorized to do business in Hawaii as a surety. The bond must run to the State of Hawaii for the benefit of any claimants against the Plan to secure the faithful performance on the obligations of the Plan. The aggregate liability of the surety shall not exceed the principal sum of the bond. The Plan Administrator must provide the Commissioner with proof of the bond at the time of the initial request for approval and any time thereafter, as requested by the Commissioner. The Plan cannot release the bond without the Commissioner's approval.

Q: Can the Commissioner allow the Plan to use a letter of credit or some other form of security in lieu of the \$100,000 bond?

Yes. The Commissioner has discretionary authority to accept letters of credit, certificates of deposit, or other evidences of security in lieu of the bond.

Q: Can the Plan Administrator or anyone associated with the Plan use Plan funds for their personal use?

A: No. The law prohibits any person who is not lawfully entitled to do so from diverting or appropriating funds accumulated for a legal service plan for that person's personal use. Anyone diverting Plan funds for his or her personal use may be subject to penalties under the law.

Q: What happens if my Plan no longer wants to do business in Hawaii?

A: Your Plan must notify the Commissioner in writing at least 60 days before the termination of the Plan that the Plan will be terminating and report the provisions for the disposition of funds accumulated under the Plan.

Q: What happens if the Commissioner finds out that your Plan is unable to comply with the requirements found in Chapter 488?

A: The Commissioner will notify your Plan in writing that your Plan is not in noncompliance with Chapter 488 and that corrective action must be taken within seven days. If noncompliance continues for seven days after notification, the Commissioner may:

1. Fine your Plan or Plan Administrator not more than \$1,000 per day for each day of noncompliance; or
2. Deny, suspend, revoke, or refuse to approve your Plan's Certificate of Authority or any Plan amendments.

The Commissioner will not deny, suspend, revoke, or refuse to approve your Plan's Certificate of Authority or any Plan amendments without providing your Plan written notification of the reason for that action. Chapter 488 provides for a hearing process if your Plan wants to challenge the propriety of the Commissioner's action.

In addition, if the Commissioner has cause to believe that any Plan is violating or is about to violate any provision of Chapter 488 or any Commissioner's order, the Commissioner may issue a cease and desist order to enforce compliance. The Commissioner may also bring an action in any court of competent jurisdiction to enjoin the Plan from continuing the violation. The Commissioner may order or petition the court to order restitution on behalf of aggrieved persons and the assessment of monetary penalties.

If you have any questions, please contact Jerry Bump, Insurance Program Specialist, at (808) 586-2790 or email him at Jerry.L.Bump@dcca.hawaii.gov.