
HOUSE BILL 2287

State of Washington 63rd Legislature 2014 Regular Session

By Representative Kirby

Read first time 01/15/14. Referred to Committee on Judiciary.

1 AN ACT Relating to the regulation of legal service organizations;
2 and adding a new chapter to Title 48 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** PUBLIC POLICY. It is the public policy of
5 the state of Washington to promote ready access to legal assistance and
6 counsel for all citizens of the state and to encourage programs and
7 plans that promote arrangements between members of the public as
8 consumers of legal services and lawyers and other trained professionals
9 who provide legal assistance and counsel to the general public for any
10 type of legal needs. To that end, and to effectuate this public
11 policy, the legislature finds that it is desirable and necessary to
12 create a regulatory environment that is not more burdensome than is
13 necessary both to ensure that the citizens of this state have ready and
14 uncomplicated access to legal services and at the same time to
15 safeguard the public from the risk that a legal expense organization
16 providing access to legal services may be unable to fulfill its
17 contractual obligations.

1 NEW SECTION. **Sec. 2.** DEFINITIONS. The definitions in this
2 section apply throughout this chapter unless the context clearly
3 requires otherwise.

4 (1) "Commissioner" means the insurance commissioner of the state of
5 Washington.

6 (2) "Legal service organization" or "organization" means any
7 person, entity, or group of persons, including associations or
8 administrators, who provide or offer to provide a legal service plan.

9 (3) "Legal service plan" or "plan" means an arrangement between an
10 organization and an individual or person or group of individuals or
11 persons, identified in the plan as members, whereby specified legal
12 services are to be provided to the members in consideration of a
13 specified payment for a specified period of time.

14 (4) "Member" means an individual, person, or group of individuals
15 or persons eligible to receive legal services under a legal service
16 plan.

17 (5) "Membership agreement" means the written contract or agreement
18 entered into between a member or group of members and the legal service
19 organization under which the member or group of members will have
20 access to legal services under a legal service plan. Membership
21 agreements are not to be considered retainer agreements as further
22 described in section 3 of this act.

23 (6) "Providing attorney" means an attorney duly licensed and in
24 good standing in this state who provides legal services under a
25 providing attorney agreement in accordance with the terms of the
26 membership agreement.

27 (7) "Providing attorney agreement" means a written contract or
28 agreement between a legal service organization and a providing attorney
29 under which the providing attorney renders and provides legal services
30 to a member of a legal service plan.

31 (8) "Sales representative" means a person who promotes, markets,
32 and solicits members on behalf of a plan, and who, in conjunction
33 therewith, thereafter sells a legal service plan to a person or
34 individual who becomes a member.

35 NEW SECTION. **Sec. 3.** ARRANGEMENTS EXCLUDED UNDER THIS CHAPTER.
36 This chapter does not apply to any of the following arrangements:

1 (1) Retainer agreements made by an attorney or firm of attorneys
2 with specified individual, group, or corporate clients with fees based
3 on reasonable estimates of the nature and amount of legal services to
4 be provided to the particular client;

5 (2) Retainer agreements, contingent fee arrangements, or similar
6 agreements made by an attorney or firm of attorneys with a client or
7 group of clients involved in the same or closely related legal matters
8 including, but not limited to, class actions;

9 (3) Any two-party agreement providing for the delivery of specified
10 legal services in return for a specified payment, including
11 administrative fees, under an arrangement made between an attorney or
12 firm of attorneys and a group of individuals who are all members of the
13 same bona fide nonprofit organization, or a group of individuals who
14 are all employed by the same employer, if the primary purpose of the
15 membership organization or employer is other than providing legal
16 services. Groups of individuals under this subsection may include,
17 without limitation, churches, labor unions, trade groups or trade
18 associations, credit unions, and condominium or special purpose
19 associations;

20 (4) Referral of individual clients to an attorney by a nonprofit
21 lawyer referral service or public corporation or entity such as a state
22 or local bar association provided there is no fee or charge for such
23 referral;

24 (5) Employee welfare benefit plans to the extent that state law or
25 regulation is preempted by federal law or regulation;

26 (6) Legal assistance plans financed primarily by public funds,
27 interest on lawyers' trust account funds in accordance with
28 requirements and regulations of the state bar association, or other
29 public service funds;

30 (7) Policies of insurance, or coverage incidental to such insurance
31 which may include legal defense, issued by an insurer holding a valid
32 certificate of authority in this state and issued under applicable laws
33 in this title pertaining to such insurance.

34 NEW SECTION. **Sec. 4.** CERTIFICATE OF REGISTRATION REQUIRED. (1)
35 A person or entity may not transact business in this state as a legal
36 service organization, or otherwise offer, market, solicit, provide, or

1 do business on behalf of a legal service plan, unless such person or
2 entity holds a valid certificate of registration as a legal service
3 organization issued pursuant to the provisions of this chapter.

4 (2) Notwithstanding the provisions of subsection (1) of this
5 section, any person or entity conducting business as a legal service
6 organization in this state as of the effective date of this section,
7 must be permitted to continue conducting business as a legal service
8 organization in this state. However, such person or entity must apply
9 for and obtain registration as a legal service organization in
10 accordance with section 6 of this act within one year after the
11 commissioner has prescribed the forms and established the fee for such
12 registration required in this chapter.

13 NEW SECTION. **Sec. 5.** REQUIREMENTS AND QUALIFICATIONS FOR
14 CERTIFICATE OF REGISTRATION. (1) A person or entity applying for
15 registration as a legal service organization must comply with the
16 following requirements as set forth in this section:

17 (a) Apply for registration on such forms prescribed by the
18 commissioner and pay all applicable fees associated therewith under
19 this chapter;

20 (b) Appoint the commissioner as its attorney-in-fact for service of
21 process, upon whom must be served all legal process issued against such
22 person or entity in regard to all causes of action arising within this
23 state. Service of process against a person or entity doing business as
24 a legal service organization must be available only by service upon the
25 commissioner, and valid service of legal process against the
26 commissioner as attorney-in-fact constitutes service upon the
27 organization; and

28 (c) Designate by name and address the individual or person who must
29 serve as the organization's registered agent to whom the commissioner
30 must forward legal process issued against the organization and received
31 by the commissioner.

32 (2) A person or entity applying for registration as a legal service
33 organization must meet the following qualifications:

34 (a) The applicant must be financially responsible and be able to
35 meet its direct obligations and responsibilities to its members under
36 the terms of its membership agreements with its members; and

1 (b) The applicant must provide such information as the commissioner
2 may establish by regulation that the directors, officers, and managers
3 of the organization are competent, trustworthy, and have sufficient
4 management and business experience to conduct the business and affairs
5 of the organization in a reasonable and prudent manner.

6 NEW SECTION. **Sec. 6.** REGISTRATION APPLICATION--FORM--FEE. (1) An
7 applicant for a certificate of registration must apply to the
8 commissioner on a form prescribed by the commissioner.

9 (2) The applicant must deposit with the office of insurance
10 commissioner the filing fees established by the commissioner to be paid
11 for filing the application for the certificate of registration and any
12 necessary accompanying documents to be filed with the application.

13 (3) The application must include the following information:

14 (a) The name, address, telephone number, and any other reasonable
15 and necessary contact information of the organization making
16 application for the certificate of registration;

17 (b) The name, address, and reasonable and necessary contact
18 information of the directors, executive officers, or senior managers of
19 the organization making application for the certificate of
20 registration;

21 (c) Whether any of the directors, officers, or senior managers of
22 the organization making application for the certificate of registration
23 has ever been convicted of or is currently under indictment for fraud
24 or other crime involving moral turpitude, or has ever had a judgment
25 entered against him or her, or has ever had any professional license
26 refused, revoked, or suspended in any state where the applicant
27 conducts business as a legal service organization;

28 (d) A statement of financial condition of the organization making
29 application for a certificate of registration, in a form satisfactory
30 to the commissioner and as may be specifically provided for in this
31 chapter or in such regulation as the commissioner may adopt hereunder;
32 and

33 (e) Any other information as the commissioner may, by regulation,
34 require as reasonable and necessary.

35 NEW SECTION. **Sec. 7.** ISSUANCE OF CERTIFICATE OF REGISTRATION.

36 (1) Upon a determination that the organization making application for

1 a certificate of registration has satisfied the requirements and met
2 the qualifications of this chapter to conduct business as a legal
3 service organization, the commissioner must issue the certificate of
4 registration to the applicant.

5 (2) If the commissioner denies or refuses to issue the certificate
6 of registration to any applicant, the commissioner must notify the
7 applicant of the denial of or refusal to issue the certificate of
8 registration in writing within fifteen days of such denial or refusal.
9 The commissioner must provide the applicant with the specific reasons
10 for the denial of or refusal to issue the certificate of registration
11 and advise the applicant of the right to appeal the actions of the
12 commissioner in accordance with the provisions of this title and
13 chapter 34.05 RCW.

14 NEW SECTION. **Sec. 8.** DURATION OF CERTIFICATE OF REGISTRATION--
15 RENEWAL--FEE. (1) The initial certificate of registration to conduct
16 business as a legal service organization must be effective as of the
17 date of issue and valid through the balance of the year in which the
18 initial certificate of registration is issued. Thereafter, a
19 certificate of registration is effective for one calendar year, from
20 January 1st through December 31st.

21 (2) A legal service organization may renew its certificate of
22 registration by timely paying the applicable renewal fee during such
23 renewal period and in such amount as is established by the
24 commissioner.

25 NEW SECTION. **Sec. 9.** GROUNDS FOR SUSPENSION, REVOCATION, OR
26 REFUSAL TO ISSUE OR RENEW CERTIFICATE OF REGISTRATION. (1) The
27 commissioner may suspend, revoke, or refuse to issue or renew a
28 certificate of registration only upon a finding of the following
29 reasons:

30 (a) Fraud or deceit by the organization applying for or obtaining
31 the certificate of registration;

32 (b) Dishonesty, fraud, or gross negligence by the organization
33 applying for or holding a certificate of registration in the conduct of
34 its business as a legal service organization;

35 (c) Conduct resulting in the conviction of a felony under the laws
36 of any state or the United States;

1 (d) Conviction of any crime under the laws of any state or the
2 United States punishable by imprisonment of not less than one year, the
3 essential element of which crime is dishonesty or fraud;

4 (e) Failure to pay a civil penalty imposed by final order of the
5 commissioner after hearing.

6 (2) An organization holding a certificate of registration that has
7 not been renewed or has been revoked must surrender the certificate of
8 registration to the commissioner at the commissioner's request.

9 (3) The commissioner may suspend, revoke, or refuse to issue or
10 renew a certificate of registration only after giving written notice of
11 the reasons for such action and after giving the organization an
12 opportunity for appeal and hearing pursuant to the provisions of
13 chapters 48.04 and 34.05 RCW.

14 NEW SECTION. **Sec. 10.** PROVIDING ATTORNEY AGREEMENT. An
15 organization may not offer, market, or operate a legal service plan in
16 this state unless the organization first enters into a written
17 providing attorney agreement with at least one providing attorney.

18 NEW SECTION. **Sec. 11.** MEMBERSHIP AGREEMENT. A legal service
19 organization must provide a membership agreement to each individual,
20 person, or group of individuals or persons who is a party to a legal
21 service plan. Each membership agreement must contain the following
22 basic provisions:

23 (1) A listing and clear description of the legal services to be
24 provided under the plan and a clear explanation of the limits of such
25 legal services;

26 (2) The name and address of the principal place of business of the
27 legal service organization offering the plan;

28 (3) If the plan offers a limited choice of providing attorneys, a
29 process for providing the services of an alternate attorney in the
30 event the designated providing attorney is unable to perform the legal
31 services provided under the plan because of a conflict of interests,
32 ethical considerations, or the particular circumstances would make it
33 impractical for the providing attorney to render legal services
34 requested by the member; and

35 (4) A provision for review and settlement of disagreements about
36 the grounds for requesting an alternate attorney.

1 NEW SECTION. **Sec. 12.** UNFAIR, DISCRIMINATORY, OR MISLEADING
2 PROVISIONS IN AGREEMENTS PROHIBITED. (1) No providing attorney
3 agreement or membership agreement may contain any provisions that are
4 unfair, discriminatory, or misleading, or that encourage
5 misrepresentation or misunderstanding of the terms of the agreement, or
6 that endanger the solvency of the organization or the plan, or that are
7 intentionally contrary to law.

8 (2) For the term of each providing attorney agreement and each
9 member agreement, a legal service organization must maintain at its
10 principal place of business adequate books and records of all
11 transactions between the organization and the providing attorney and
12 between the organization and the members of a plan. Upon reasonable
13 notice to the organization, the commissioner must have reasonable
14 access to such books and records provided such access does not violate
15 or conflict with the attorney-client relationship or with any privilege
16 or other privacy right recognized in this state.

17 NEW SECTION. **Sec. 13.** FILING AGREEMENTS WITH COMMISSIONER. Each
18 legal service organization must file with the commissioner a copy of
19 all current membership agreement forms used by the organization in this
20 state. The organization must also file any material changes or
21 revisions in the membership agreement forms with the commissioner prior
22 to using any such revised forms.

23 NEW SECTION. **Sec. 14.** ANNUAL REPORT OF LEGAL SERVICE
24 ORGANIZATION. (1) Each legal service organization doing business in
25 this state must annually file with the commissioner, on such form and
26 in such detail as the commissioner may prescribe by regulation, a
27 verified financial statement providing sufficient information
28 concerning the legal service organization's assets, liabilities, loss
29 and expense records, if applicable, fee refund reserves or unearned
30 payment reserves, if applicable, and such other information as may
31 reasonably be required so long as the disclosure of such information
32 does not violate or conflict with the attorney-client relationship or
33 with any privilege or any other privacy right recognized in this state.

34 (2) Each legal service organization must submit to the commissioner
35 annually a statement containing the names and addresses of all

1 individuals or persons in this state whom the organization has
2 contracted, appointed, or retained as sales or marketing
3 representatives to act on behalf of the organization.

4 NEW SECTION. **Sec. 15.** BOND OR SECURITY DEPOSIT--WHEN REQUIRED--
5 AMOUNT. A legal service organization may not issue, sell, or offer for
6 sale in this state a legal service plan providing for access to legal
7 services under the plan unless the organization offering the plan posts
8 a bond or provides evidence of a security deposit pursuant to this
9 section. The bond or security deposit must be held in trust to the
10 commissioner for the protection of members in the plan and other
11 affected persons, if any, under the plan. The security bond or other
12 deposit posted by the organization under this section must be in the
13 amount of one hundred thousand dollars, and must be held in a bank
14 authorized to transact business in this state and insured by the
15 federal deposit insurance corporation.

16 NEW SECTION. **Sec. 16.** SCOPE AND APPLICABILITY OF THIS CHAPTER.

17 (1) The provisions of this chapter may not in any way affect the
18 practice of law in this state.

19 (2) The provisions of this chapter must provide for the oversight
20 of legal service plans and legal service organizations in this state.
21 Legal service organizations are not insurers under RCW 48.01.050, and,
22 legal service plans are not insurance under RCW 48.01.040. Except as
23 specifically described and provided for in this chapter, legal service
24 plans, and legal service organizations and their representatives are
25 not subject to the provisions of this title.

26 (3) The provisions of this chapter may not affect the validity of
27 any legal service plan, membership agreement, or providing attorney
28 agreement in force as of the effective date of this section and which
29 would otherwise be subject to the provisions of this chapter. Any
30 revision to a legal service plan, membership agreement, providing
31 attorney agreement, or similar plan or agreement after the effective
32 date of this section is subject to the full provisions of this chapter
33 and must comply in all respects therewith from and after any such
34 renewal or revision thereof.

1 NEW SECTION. **Sec. 17.** REGULATIONS. The commissioner has
2 authority to promulgate such regulations and rules as may be reasonable
3 and necessary to carry out the provisions of this chapter within the
4 scope and application of this chapter as specifically set forth in this
5 chapter.

6 NEW SECTION. **Sec. 18.** Sections 1 through 17 of this act
7 constitute a new chapter in Title 48 RCW.

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