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HOUSE BILL 2691

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State of Washington                      63rd Legislature                      2014 Regular Session

By Representative Kirby

Read first time 01/27/14. Referred to Committee on Judiciary.

1            AN ACT Relating to the regulation of legal service contractors; and  
2 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 service contractor  
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 contractor" means any person, entity, or group  
7 of persons, including associations, who is not engaged in the practice  
8 of law or the business of insurance and who, for consideration,  
9 provides enrolled participants with legal services through agreements  
10 with providing attorneys.

11          (3) "Legal service plan" or "plan" means an arrangement between a  
12 legal service contractor and an individual or person or group of  
13 individuals or persons, whereby specified legal services are to be  
14 provided to enrolled participants in consideration of a specified  
15 payment for a specified period of time.

16          (4) "Enrolled participant" means an individual, person, or group of  
17 individuals or persons eligible to receive legal services under a legal  
18 service plan.

19          (5) "Participation agreement" means the written contract or  
20 agreement entered into between an enrolled participant or group of  
21 enrolled participants and the legal service contractor under which the  
22 enrolled participants or group of enrolled participants will have  
23 access to legal services under a legal service plan. Participation  
24 agreements are not to be considered retainer agreements as further  
25 described in section 3 of this act.

26          (6) "Providing attorney" means an attorney licensed, in good  
27 standing, and eligible to practice law in this state who provides legal  
28 services under a providing attorney agreement in accordance with the  
29 terms of the participation agreement.

30          (7) "Providing attorney agreement" means a written contract or  
31 agreement between a legal service contractor and a providing attorney  
32 under which the providing attorney renders and provides legal services  
33 to an enrolled participant of a legal service plan.

34          (8) "Sales representative" means a person who promotes, markets,  
35 and solicits participants on behalf of a plan, and who, in conjunction  
36 therewith, thereafter sells a legal service plan to a person or  
37 individual who becomes an enrolled participant.

1           NEW SECTION.   **Sec. 3.**   ARRANGEMENTS EXCLUDED UNDER THIS CHAPTER.

2   This chapter does not apply to any of the following arrangements:

3           (1) Retainer, fee, engagement, or representation agreements made by  
4   an attorney or firm of attorneys with any person or group other than a  
5   legal service contractor;

6           (2) Referral of individual clients to an attorney by a nonprofit  
7   lawyer referral service or public corporation or entity such as a state  
8   or local bar association provided there is no fee or charge for such  
9   referral;

10          (3) Employee welfare benefit plans to the extent that state law or  
11   regulation is preempted by federal law or regulation;

12          (4) Legal assistance plans financed primarily by public funds,  
13   interest on lawyers' trust account funds in accordance with  
14   requirements and regulations of the state bar association, or other  
15   public service funds;

16          (5) Policies of insurance, or coverage incidental to such insurance  
17   which may include legal defense, issued by an insurer holding a valid  
18   certificate of authority in this state and issued under applicable laws  
19   in this title pertaining to such insurance.

20           NEW SECTION.   **Sec. 4.**   CERTIFICATE OF REGISTRATION REQUIRED.   (1)

21   A person or entity may not transact business in this state as a legal  
22   service contractor, or otherwise offer, market, solicit, provide, or do  
23   business on behalf of a legal service plan, unless such person or  
24   entity holds a valid certificate of registration as a legal service  
25   contractor issued pursuant to this chapter.

26          (2) Notwithstanding subsection (1) of this section, any person or  
27   entity conducting business as a legal service contractor in this state  
28   as of the effective date of this section, must be permitted to continue  
29   conducting business as a legal service contractor in this state.  
30   However, such person or entity must apply for and obtain registration  
31   as a legal service contractor in accordance with section 6 of this act  
32   within one year after the commissioner has prescribed the forms and  
33   established the fee for such registration required in this chapter.

34           NEW SECTION.   **Sec. 5.**   REQUIREMENTS AND QUALIFICATIONS FOR  
35   CERTIFICATE OF REGISTRATION.   (1) A person or entity applying for

1 registration as a legal service contractor must comply with the  
2 following requirements as set forth in this section:

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

6 (b) Appoint the commissioner as its attorney-in-fact for service of  
7 process, upon whom must be served all legal process issued against such  
8 person or entity in regard to all causes of action arising within this  
9 state. Service of process against a person or entity doing business as  
10 a legal service contractor must be available only by service upon the  
11 commissioner, and valid service of legal process against the  
12 commissioner as attorney-in-fact constitutes service upon the legal  
13 service contractor; and

14 (c) Designate by name and address the individual or person who must  
15 serve as the legal service contractor's registered agent to whom the  
16 commissioner must forward legal process issued against the legal  
17 service contractor and received by the commissioner.

18 (2) A person or entity applying for registration as a legal service  
19 contractor must meet the following qualifications:

20 (a) The applicant must be financially responsible and be able to  
21 meet its direct obligations and responsibilities to its enrolled  
22 participants under the terms of its participation agreements with its  
23 enrolled participants; and

24 (b) The applicant must provide such information as the commissioner  
25 may establish by rule that the directors, officers, and managers of the  
26 legal service contractor are competent, trustworthy, and have  
27 sufficient management and business experience to conduct the business  
28 and affairs of the legal service contractor in a reasonable and prudent  
29 manner.

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

33 (2) The applicant must deposit with the office of the insurance  
34 commissioner the filing fees established by the commissioner to be paid  
35 for filing the application for the certificate of registration and any  
36 necessary accompanying documents to be filed with the application.

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

1 (a) The name, address, telephone number, and any other reasonable  
2 and necessary contact information of the legal service contractor  
3 making application for the certificate of registration;

4 (b) The name, address, and reasonable and necessary contact  
5 information of the directors, executive officers, or senior managers of  
6 the legal service contractor making application for the certificate of  
7 registration;

8 (c) Whether any of the directors, officers, or senior managers of  
9 the legal service contractor making application for the certificate of  
10 registration has ever been convicted of or is currently under  
11 indictment for fraud or other crime involving moral turpitude, or has  
12 ever had a judgment entered against him or her, or has ever had any  
13 professional license refused, revoked, or suspended in any state where  
14 the applicant conducts business as a legal service contractor;

15 (d) A statement of financial condition of the legal service  
16 contractor making application for a certificate of registration, in a  
17 form satisfactory to the commissioner and as may be specifically  
18 provided for in this chapter or in such rule as the commissioner may  
19 adopt hereunder; and

20 (e) Any other information as the commissioner may, by rule, require  
21 as reasonable and necessary.

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

23 (1) Upon a determination that the legal service contractor making  
24 application for a certificate of registration has satisfied the  
25 requirements and met the qualifications of this chapter to conduct  
26 business as a legal service contractor, the commissioner must issue the  
27 certificate of registration to the applicant.

28 (2) If the commissioner denies or refuses to issue the certificate  
29 of registration to any applicant, the commissioner must notify the  
30 applicant of the denial of or refusal to issue the certificate of  
31 registration in writing within fifteen days of such denial or refusal.  
32 The commissioner must provide the applicant with the specific reasons  
33 for the denial of or refusal to issue the certificate of registration  
34 and advise the applicant of the right to appeal the actions of the  
35 commissioner in accordance with the provisions of this title and  
36 chapter 34.05 RCW.

1           NEW SECTION.   **Sec. 8.**   DURATION OF CERTIFICATE OF REGISTRATION--  
2 RENEWAL--FEE. (1) The initial certificate of registration to conduct  
3 business as a legal service contractor must be effective as of the date  
4 of issue and valid through the balance of the year in which the initial  
5 certificate of registration is issued. Thereafter, a certificate of  
6 registration is effective for one calendar year, from January 1st  
7 through December 31st.

8           (2) A legal service contractor may renew its certificate of  
9 registration by timely paying the applicable renewal fee during such  
10 renewal period and in such amount as is established by the  
11 commissioner.

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

17           (a) Fraud or deceit by the legal service contractor applying for or  
18 obtaining the certificate of registration;

19           (b) Dishonesty, fraud, or gross negligence by the legal service  
20 contractor applying for or holding a certificate of registration in the  
21 conduct of its business as a legal service contractor;

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

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

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

29           (2) A legal service contractor holding a certificate of  
30 registration that has not been renewed or has been revoked must  
31 surrender the certificate of registration to the commissioner at the  
32 commissioner's request.

33           (3) The commissioner may suspend, revoke, or refuse to issue or  
34 renew a certificate of registration only after giving written notice of  
35 the reasons for such action and after giving the legal service  
36 contractor an opportunity for appeal and hearing pursuant to the  
37 provisions of chapters 48.04 and 34.05 RCW.

1        NEW SECTION.    **Sec. 10.**    PROVIDING ATTORNEY AGREEMENT.    A legal  
2 service contractor may not offer, market, or operate a legal service  
3 plan in this state unless the legal service contractor first enters  
4 into a written providing attorney agreement with at least one providing  
5 attorney.

6        NEW SECTION.    **Sec. 11.**    PARTICIPATION AGREEMENT.    A legal service  
7 contractor must provide a participation agreement to each individual,  
8 person, or group of individuals or persons who is a party to a legal  
9 service plan.    Each participation agreement must contain the following  
10 basic provisions:

11        (1) A listing and clear description of the legal services to be  
12 provided under the plan and a clear explanation of the limits of such  
13 legal services;

14        (2) The name and address of the principal place of business of the  
15 legal service contractor offering the plan;

16        (3) If the plan offers a limited choice of providing attorneys, a  
17 process for providing the services of an alternate attorney in the  
18 event the designated providing attorney is unable to perform the legal  
19 services provided under the plan because of a conflict of interests,  
20 ethical considerations, or the particular circumstances would make it  
21 impractical for the providing attorney to render legal services  
22 requested by the enrolled participant; and

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

25        NEW SECTION.    **Sec. 12.**    UNFAIR, DISCRIMINATORY, OR MISLEADING  
26 PROVISIONS IN AGREEMENTS PROHIBITED.    (1) No providing attorney  
27 agreement or participation agreement may contain any provisions that  
28 are unfair, discriminatory, or misleading, or that encourage  
29 misrepresentation or misunderstanding of the terms of the agreement, or  
30 that endanger the solvency of the legal service contractor or the plan,  
31 or that are intentionally contrary to law.

32        (2) For the term of each providing attorney agreement and each  
33 participation agreement, a legal service contractor must maintain at  
34 its principal place of business adequate books and records of all  
35 transactions between the legal service contractor and the providing  
36 attorney and between the legal service contractor and the enrolled

1 participants of a plan. Upon reasonable notice to the legal service  
2 contractor, the commissioner must have reasonable access to such books  
3 and records provided such access does not violate or conflict with the  
4 attorney-client relationship or with any privilege or other privacy  
5 right recognized in this state.

6 NEW SECTION. **Sec. 13.** FILING AGREEMENTS WITH COMMISSIONER. Each  
7 legal service contractor must file with the commissioner a copy of all  
8 current participation agreement forms used by the legal service  
9 contractor in this state. The legal service contractor must also file  
10 any material changes or revisions in the participation agreement forms  
11 with the commissioner prior to using any such revised forms.

12 NEW SECTION. **Sec. 14.** ANNUAL REPORT OF LEGAL SERVICE CONTRACTOR.  
13 (1) Each legal service contractor doing business in this state must  
14 annually file with the commissioner, on such form and in such detail as  
15 the commissioner may adopt by rule, a verified financial statement  
16 providing sufficient information concerning the legal service  
17 contractor's assets, liabilities, loss and expense records, if  
18 applicable, fee refund reserves or unearned payment reserves, if  
19 applicable, and such other information as may reasonably be required so  
20 long as the disclosure of such information does not violate or conflict  
21 with an attorney's ethical duty of confidentiality or with the  
22 attorney-client relationship or with any privilege or any other privacy  
23 right recognized in this state.

24 (2) Each legal service contractor must submit to the commissioner  
25 annually a statement containing the names and addresses of all  
26 individuals or persons in this state whom the legal service contractor  
27 has contracted, appointed, or retained as sales or marketing  
28 representatives to act on behalf of the legal service contractor.

29 NEW SECTION. **Sec. 15.** BOND OR SECURITY DEPOSIT--WHEN REQUIRED--  
30 AMOUNT. A legal service contractor may not issue, sell, or offer for  
31 sale in this state a legal service plan providing for access to legal  
32 services under the plan unless the legal service contractor offering  
33 the plan posts a bond or provides evidence of a security deposit  
34 pursuant to this section. The bond or security deposit must be held in  
35 trust to the commissioner for the protection of enrolled participants



1 in the plan and other affected persons, if any, under the plan. The  
2 security bond or other deposit posted by the legal service contractor  
3 under this section must be in the amount of one hundred thousand  
4 dollars, and must be held in a bank authorized to transact business in  
5 this state and insured by the federal deposit insurance corporation.

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

7 (1) This chapter does not in any way affect the practice of law in this  
8 state.

9 (2) This chapter must provide for the oversight of legal service  
10 plans and legal service contractors in this state. Legal service  
11 contractors are not insurers under RCW 48.01.050 and legal service  
12 plans are not insurance under RCW 48.01.040. Except as specifically  
13 described and provided for in this chapter, legal service plans and  
14 legal service contractors and their representatives are not subject to  
15 this title.

16 (3) This chapter does not affect the validity of any legal service  
17 plan, participation agreement, or providing attorney agreement in force  
18 as of the effective date of this section and which would otherwise be  
19 subject to this chapter. Any revision to a legal service plan,  
20 participation agreement, providing attorney agreement, or similar plan  
21 or agreement after the effective date of this section is subject to the  
22 full provisions of this chapter and must comply in all respects  
23 therewith from and after any such renewal or revision thereof.

24 NEW SECTION. **Sec. 17.** RULES. The commissioner has authority to  
25 adopt rules as may be reasonable and necessary to implement this  
26 chapter within the scope and application of this chapter as  
27 specifically set forth in this chapter.

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

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