

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 1187

Short Title: Prepaid Legal Service Plans.

(Public)

Sponsors: Senator Simpson.

Referred to: Judiciary II.

May 19, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO REGULATE THE BUSINESS OF PREPAID LEGAL SERVICE
3 PLANS.

4 The General Assembly of North Carolina enacts:

5 Section 1. Chapter 58 of the General Statutes is amended by adding a new
6 Article to read:

7 **"ARTICLE 68A.**

8 **"PREPAID LEGAL SERVICE PLANS.**

9 **"§ 58-68A-1. Short title.**

10 This Article may be cited as the Legal Service Organization Act of 1993.

11 **"§ 58-68A-5. Purpose.**

12 This Article is intended:

- 13 (1) To encourage the development of effective and economical methods of
14 making legal services available to the public and easing the burden of
15 necessary legal expenses, and
16 (2) To provide an effective and flexible regulatory framework for legal
17 services plans that will encourage competition, experimentation, and
18 innovation while protecting the public.

19 **"§ 58-68A-10. Definitions.**

20 As used in this Article:

- 21 (1) 'Affiliated Provider' means any attorney licensed to practice law
22 having a written contract with a legal service organization to provide
23 certain legal services to members or a legal service plan:
24 a. In exchange for payment; or

- 1 b. In consideration of the referral of members requiring legal
2 services.
- 3 (2) 'Basic Legal Service Benefits' means a plan providing or paying for
4 legal services that are informational, noncomplex, routine, or
5 otherwise capable of being provided without the necessity of
6 subsequent lengthy involvement by an affiliated provider, such as:
7 a. Legal advice and information, including consultations and
8 document review;
9 b. Representation of a plan member, through contact by telephone
10 or letter with an adverse party; or
11 c. Preparation of noncomplex legal documents such as simple
12 wills or powers of attorney.
- 13 (3) 'Comprehensive Legal Service Benefits' means a plan providing or
14 paying for legal services that are more extensive, complex, or time-
15 consuming, such as:
16 a. Complex document preparation, extended negotiations, real
17 estate transactions, and other similar legal services; or
18 b. Representation in administrative, civil, or criminal judicial
19 proceedings such as divorce proceedings, child custody
20 hearings, and traffic court.
- 21 (4) 'Legal Service' means any service normally provided by or at the
22 direction of an attorney, as well as the payment of related expenses and
23 court costs; but not including the payment of fines, penalties,
24 judgments, or assessments.
- 25 (5) 'Legal Service Organization' or 'LSO' means any person or any group
26 of persons authorized by this statute to provide or offer a legal service
27 plan or plans.
- 28 (6) 'Legal Service Plan' or 'Plan' means a contract between a member or
29 group of members and a person whereby the person undertakes to
30 provide, arrange for, or pay the cost of, basic or comprehensive legal
31 service benefits in exchange for a fixed sum or per capita payment.
- 32 (7) 'Member' means an individual, or the spouse or dependent of that
33 individual, entitled to receive legal services under a legal service plan.
- 34 (8) 'Person' means any person, partnership, corporation, or trust fund.
- 35 (9) 'Plan Sponsor' means an organization whose membership, participants,
36 cardholders, subscribers, or employees are eligible to become
37 members of a legal service plan.

38 **"§ 58-68A-15. Scope.**

39 The definition of basic legal benefits reflects what is currently considered an 'access'
40 plan. It is designed to allow for growth and change within the prepaid industry, but is
41 limited to preventive, noncomplex, and routine legal services.

42 Comprehensive legal benefits include plans which cover most of the average
43 person's legal needs, especially those which involve court representation or more

1 extensive legal services. Both the comprehensive and basic legal service definitions
2 would regulate business legal service plans under this act.

3 **"§ 58-68A-20. Legal Expense Insurance.**

4 (a) Any arrangement whereby an organization provides comprehensive legal
5 service benefits and where more than twenty-five percent (25%) of the cost to the legal
6 service organization of legal services provided under the arrangement is:

7 (1) Reimbursed directly to the member; or

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

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

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

14 **"§ 58-68A-25. Exemptions.**

15 This Article does not apply to:

16 (1) Insurers licensed or authorized to offer legal expense insurance in this
17 State or to any nonadmitted insurers.

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

23 (3) Not-for-profit bar association sponsored or approved lawyer referral
24 services.

25 (4) Employee welfare benefit plans as defined in the Employee Retirement
26 Income Security Act of 1974 to the extent that section 514 of the act
27 preempts the regulation of such plans under state law.

28 (5) Legal service plan formed for the benefit of members of a bona fide
29 membership organization, provided that such organization:

30 a. Is a nonprofit organization, exempt from taxation under a
31 section of the Internal Revenue Code other than under section
32 501(c)(20);

33 b. Has as its primary purpose some purpose other than the
34 provision of legal services;

35 c. Contracts directly with attorneys or law firms for legal services
36 to be provided under its plan; and

37 d. Perform all marketing and administration of the plan at its own
38 expense.

39 **"§ 58-68A-30. Establishment of Legal Service Organization.**

40 (a) Notwithstanding any law of this State to the contrary;

41 (1) Any person may apply to the Commissioner for a certificate of
42 authority to operate a legal services plan.

1 (2) Legal services plans may be offered on an individual or group basis,
2 and along with or combined with other insurance and/or noninsurance
3 products or services.

4 (b) Except as provided in G.S. 58-68A-25 or subsection (d) of this section:

5 (1) No person shall establish or operate a legal services plan in this State
6 without a certificate of authority from the Commissioner.

7 (2) No person shall sell or offer to sell a legal service plan which has not
8 received a certificate of authority.

9 (c) Subsection (b) of this section shall not apply to any person providing or
10 offering a legal service plan if fewer than twenty-five percent (25%) of the members in
11 that plan reside in this State, and the person is regulated to a comparable extent by
12 another state in which a larger number of members reside, is domiciled, or has its
13 principal place of business. Persons exempted by this subsection must notify the
14 regulator of their presence in the State and are subject to G.S. 58-68A-70.

15 (d) Every legal service plan as of the effective date of this Article shall submit an
16 application for a certificate of authority under subsection (e) of this section within 90
17 days of the effective date of this Article. Each applicant may continue to operate until
18 the Commissioner acts upon the application. In the event an application is denied under
19 G.S. 58-68A-35, the applicant shall henceforth be treated as a legal services
20 organization whose certificate of authority has been revoked.

21 (e) Applications for a certificate of authority shall include:

22 (1) The basic organizational documents of the applicant;

23 (2) The names, addresses, and positions of the officers, directors, owners,
24 partners, and trustees of the applicant;

25 (3) All agreements by the applicant with the individuals and organizations
26 listed under subdivision (2) of this subsection;

27 (4) A general description of the applicant, its legal services plan and its
28 place for conducting the business;

29 (5) All agreements relating to the legal services plan, including
30 agreements with affiliated providers;

31 (6) All forms and agreements proposed to be given to subscribers;

32 (7) A statement of the financial condition of the applicant;

33 (8) A description of the proposed membership payments with supporting
34 data;

35 (9) A statement showing that the plan will have an adequate number of
36 affiliated providers under contract to carry out its plans; and

37 (10) Any other information reasonably required by the Commissioner.

38 (f) All information supplied by the applicant under subdivisions (5),(7), (8), and
39 (9) of subsection (e) of this section shall be considered confidential and shall remain in
40 the exclusive possession of the Commissioner.

41 **"§ 58-68A-35. Certificate of authority.**

42 (a) The Commissioner shall issue, except as provided in subsection (b) of this
43 section, to any person filing an application, within 90 days of the filing, a Class A or
44 Class B certificate of authority as follows:

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

4 (2) A Class B certificate of authority shall be issued to legal service
5 organizations offering plans providing comprehensive legal service
6 benefits.

7 (b) The Commissioner may refuse to issue a certificate of authority, within 90
8 days, if the Commissioner notifies the applicant during that time that the application is
9 not complete or sufficient and states the reasons therefor, that payment of the fee
10 required by G.S. 58-68A-85 has not been made or that the Commissioner is not satisfied
11 that:

12 (1) The basic organizational documents of the applicant permit the
13 applicant to conduct business as a legal services organization.

14 (2) The legal service organization has demonstrated the ability to provide
15 the services in a manner which ensures their availability and
16 accessibility.

17 (3) The legal service organization is financially responsible and may be
18 reasonably expected to meet its obligations to its members. In making
19 this determination the Commissioner shall consider:

20 a. Agreements, if any, with an insurer or any other organization
21 paying, contracting to pay for, or in any way guaranteeing the
22 provision of legal services under the plan;

23 b. All agreements with the affiliated providers guaranteeing the
24 furnishing of legal services under the plan;

25 c. The adequacy of working capital;

26 d. Any surety head or deposit of cash or securities as a guarantee
27 that plan services will be duly performed; and

28 e. The scope of the legal services benefits offered under the legal
29 services plan.

30 **"§ 58-68A-40. Required deposit or bond.**

31 (a) To assure the faithful performances of its obligations in the event of
32 insolvency, each legal service organization, prior to the issuance of its certificate of
33 authority, shall deposit and maintain with the Commissioner securities of the type
34 eligible for deposit by an insurer under this Chapter. Such securities shall be held in
35 trust and shall have at all times a market value in the amount specified. Whenever the
36 market value of such securities is less than ninety-five percent (95%) of the amount of
37 the deposit required, the legal service organization shall deposit additional securities or
38 otherwise increase the deposit to the amount required:

39 (1) The initial deposit for a legal service organization for at least the first
40 full year of operation shall be in the amount of:

41 a. For a Class A certificate of authority, five thousand dollars
42 (\$5,000);

43 b. For a Class B certificate of authority, twenty-five thousand
44 dollars (\$25,000).

(2) The amount of the initial deposit shall be adjusted annually thereafter on October 1 based upon gross collected payments with the State, since the last adjustment, as follows:

GROSS PAYMENTS REVENUE

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

(3) In lieu of any deposit of securities required under subdivision (1) of this subsection and subject to the approval of the Commissioner, a legal service organization may file with the Commissioner 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 Commissioner. The Commissioner 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) of this section.

(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 Commissioner 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 subsection (b) of G.S. 58-68A-30. Whenever the organization ceases to do business or reduces its level of activity in this State as defined in G.S. 58-68A-30 and furnishes to the Commissioner proof satisfactory to the Commissioner that the organization has provided for all of its obligations to its enrollees and/or affiliated providers in this State, the Commissioner shall release the deposited securities to the parties entitled thereto upon presentation of the Commissioner's receipts for such securities, or shall release any bond filed with it in lieu of such deposit.

- 1 (7) The Commissioner may reduce the minimum market value of
2 securities required under subdivision (1) of this subsection of this
3 subsection or the amount of the surety bond required under subsection
4 (b) of this section if the Commissioner finds that the reduction is
5 justified by:
- 6 a. The terms and number of existing contracts with enrollees;
7 b. Financial guarantees of financially sound public or private
8 organizations or agencies;
9 c. Agreements with affiliated providers for the furnishing of legal
10 services;
11 d. Agreements with other persons for insuring the payment of the
12 cost of legal services or the provision of alternative coverage in
13 the event the legal service organization is unable to perform its
14 obligations; or
15 e. Other reliable financial guarantees.
- 16 (8) The Commissioner may at any time enter an order modifying the
17 amount of the deposit or bond specified under subsections (a) or (c) of
18 this section if it finds that there has been a substantial change in the
19 facts upon which the original determination was based.
- 20 (9) No judgment creditor or other claimant of a legal service organization
21 shall have the right to levy upon any of the assets or securities held in
22 this State as a deposit.

23 **"§ 58-68A-45. Affiliated provider guarantee.**

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

30 (b) Subsection (a) of this section shall not apply if the legal service organization
31 deposits and maintains with the Commissioner securities or bonds in the amount of ten
32 percent (10%) of the gross collected payments received during the last fiscal year of the
33 plan.

34 **"§ 58-68A-50. Contract forms.**

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

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

- 39 (1) A description of the legal services to which a member is entitled;
40 (2) A description of the exclusions and limitations on services to be
41 provided including any deductible or copayment features and all
42 restrictions relating to preexisting conditions; and
43 (3) Any criteria by which a member may be terminated or denied
44 reenrollment.

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

7 (d) Contracts between the LSO and members shall be filed with the
8 Commissioner within 30 days of the use of any such contracts.

9 **"§ 58-68A-55. Annual report.**

10 (a) All legal service organizations subject to this Article, which offer either basic
11 or comprehensive legal service plans, shall annually, on or before October 1, file a
12 report with the Commissioner, verified by an appropriate official of the organization.

13 (b) The report shall include:

14 (1) A financial statement of the organization, including its balance sheet
15 and statement of income and expenditures for the preceding year
16 certified by an independent public accountant;

17 (2) Information about the number and geographic distribution of the
18 affiliated providers in relation to the plan's enrollees; and

19 (3) Any changes in the information submitted initially upon application
20 for a certificate of authority under G.S. 58-68A-35.

21 (c) All information supplied under subsection (b) of this section shall be
22 considered confidential and remain in the exclusive possession of the Commissioner.

23 **"§ 58-68A-60. Complaint system.**

24 (a) Every legal service plan shall include a complaint system, administered by
25 the legal service organization or plan sponsor, to provide reasonable procedures for the
26 resolution of complaints initiated by members concerning denial or limitations of
27 services to which the member believes he or she is entitled or the conduct of an
28 affiliated provider.

29 (b) The legal service organization shall maintain a record of written complaints
30 made against it or its affiliated providers for a period of three years, and shall make such
31 records available for inspection by the Commissioner.

32 **"§ 58-68A-65. Prohibited practices.**

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

36 (b) G.S. 75-1.1 shall be construed to apply to legal service organizations, legal
37 service plans and their marketing materials, and plan documents except to the extent
38 that the Commissioner determines the nature of legal services organizations, legal
39 service plans, and evidence of coverage render such sections clearly inappropriate.

40 (c) A member's coverage may not be cancelled by the legal service organization
41 except for failure to pay for such coverage, misrepresentation in the application for that
42 coverage, abuse of plan rules, or such other reasons as may be approved by the
43 Commissioner. A member's coverage, however, may be terminated or its renewal

1 refused by the organization effective at the end of any annual anniversary for any reason
2 applied in a nondiscriminatory manner.

3 (d) No legal service organization may use in its name, contracts, or literature any
4 of the words 'insurance', 'casualty', 'surety', 'mutual', or any other words descriptive of
5 the insurance, casualty, or surety business, or similar to the name or description of any
6 insurance or surety corporation doing business in this State.

7 **"§ 58-68A-70. Regulation of sales agents.**

8 (a) Every legal service organization authorized to do business in this State shall
9 register each individual who receives compensation for soliciting enrollments on its
10 behalf by listing such individuals on a form provided by the Commissioner. On January
11 1 and July 1 of each year, the legal service organization shall advise the Commissioner
12 of additions to or deletions from this list since the last reporting date.

13 (b) Every legal service organization shall be responsible for the proper training
14 and supervision of its sales agents and shall be liable for any violation by the sales agent
15 of any provision of this Article.

16 **"§ 58-68A-75. Examinations.**

17 (a) The Commissioner shall make an examination of the operations of any legal
18 service organization holding a Class B certificate of authority under this Article. Such
19 Article examination shall include, but not be limited to, all contracts, agreements, and
20 arrangements for the operation of the legal service plan or plans and shall be made not
21 more than every three years.

22 (b) The Commissioner shall make an examination of the operation of any legal
23 service organization that holds a Class A certificate of authority. The Commissioner
24 may conduct such examinations not more often than once every five years.

25 (c) Every legal service organization shall make its books and records relating to
26 its operations available to the Commissioner to facilitate the examination.

27 (d) No examination of the Commissioner may be undertaken which would in any
28 way violate the attorney-client privilege except with the express written consent of the
29 member.

30 (e) For the purpose of examination the Commissioner may issue subpoenas,
31 administer oaths to, and examine the officers and agents of the legal service
32 organization.

33 **"§ 58-68A-80. Administrative findings and sanctions.**

34 (a) The Commissioner may initiate proceedings to determine if a legal service
35 organization has:

36 (1) Operated in a manner which materially is not in conformance with its
37 organizational documents;

38 (2) Materially breached its obligations to furnish the legal services
39 specified in its contracts with members;

40 (3) Violated any provision of this Article, or any regulations promulgated
41 hereunder;

42 (4) Made any false statement with respect to any report or statement
43 required by this Article or by the Commissioner under this Article;

1 (5) Advertised or marketed, or attempted to market, its services in a
2 manner which misrepresents its services or its capacity to deliver
3 services, or engaged in deceptive, misleading, or unfair practices with
4 respect to advertising or marketing; and

5 (6) Attempted to prevent the Commissioner from performance of any duty
6 imposed by this Article.

7 (b) After providing written notice and an opportunity for a hearing to be
8 scheduled no sooner than 20 days following the notice, the Commissioner shall make
9 administrative findings and, as appropriate, may:

10 (1) Impose a penalty of not more than five thousand dollars (\$5,000) for
11 each and every unlawful act committed;

12 (2) Issue an administrative order requiring the legal services organization
13 to:

14 a. Cease or modify inappropriate conduct or practices by it or any
15 of the personnel employed or associated with it;

16 b. Fulfill its contractual obligations;

17 c. Provide a service which has been improperly denied; or

18 d. Take steps to provide or arrange for any services which it has
19 agreed to make available.

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

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

25 (d) If its certificate of authority is revoked, the organization shall proceed under
26 the supervision of the Commissioner, immediately following the effective date of the
27 revocation, to conclude its affairs, and shall conduct no further business except as may
28 be essential to the orderly conclusion of such affairs; provided that the Commissioner
29 may, by written order, permit further operation of the organization as the Commissioner
30 finds to be in the best interest of the members, to the end that the members will be
31 afforded the greatest practical opportunity to obtain continued legal services coverage.

32 (e) The Commissioner may apply to any court for the legal or equitable relief the
33 Commissioner deems necessary to effectively carry out the purposes of this Article.

34 **"§ 58-68A-85. Fees.**

35 Every legal service organization subject to this Article shall pay to the
36 Commissioner the following fees:

37 (1) For filing a copy of its application for a certificate of authority or
38 amendment thereto, five hundred dollars (\$500.00).

39 (2) For filing an annual report pursuant to G.S. 58-68A-55, one hundred
40 dollars (\$100.00).

41 The expenses of any examinations conducted pursuant to G.S. 58-68A-75.

42 **"§ 58-68A-90. Statutory construction and relationship to other laws.**

43 (a) Except as otherwise provided in this Article, other provisions of Chapter 58
44 shall not be applicable to any legal service organization. This provision shall not apply

1 to an insurer licensed and regulated pursuant to the insurance laws or the general laws
2 of the State except with respect to its legal service organization activities authorized and
3 regulated pursuant to this Article.

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

9 **"§ 58-68A-95. Implementing regulations.**

10 The Commissioner, after notice of hearing, may promulgate reasonable rules and
11 regulations necessary and proper to carry out the provisions of this Article. Nothing in
12 this Article shall be construed to prohibit the Commissioner from requiring changes in
13 procedure previously approved by the Commissioner.

14 **"§ 58-68A-100. Practice of law prohibited.**

15 (a) A legal service organization shall not engage in the practice of law in any
16 manner, nor shall the organization control or attempt to control any attorney in the
17 exercise of that attorney's professional judgment.

18 (b) Any legal service organization authorized under this Article and operating
19 under this Article shall not by that fact alone be deemed to be practicing law."

20 Sec. 2. Severability. – If any action, term, or provision of this act shall be
21 adjudged invalid for any reason, such judgement shall not affect, impair, or invalidate
22 any other section, term, or provision of this act but the remaining sections, terms, and
23 provisions shall be and remain in full force and effect.

24 Sec. 3. This act becomes effective October 1, 1993.