

The Commonwealth of Massachusetts

PRESENTED BY:

Eldridge, James - Rep. (HOU)

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts
in General*

Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the
accompanying bill:

An Act Increasing Access to More Affordable Legal Service Plans

PETITION OF:

NAME:

Eldridge, James - Rep. (HOU)

DISTRICT/ADDRESS:

Middlesex and Worcester

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT INCREASING ACCESS TO MORE AFFORDABLE LEGAL SERVICE PLANS

*Be it enacted by the Senate and House of Representatives in General Court assembled,
and by the authority of the same, as follows:*

1 **SECTION 1.** The General Laws is hereby amended by inserting after chapter 176H the
2 following new chapter:-

3 Chapter 176A 1/2 PROFESSIONAL LICENSING STANDARDS FOR INDIVIDUAL AND
4 FAMILY PREPAID LEGAL SERVICES PLANS.

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7 **Section 1. Definitions**

8 The following words, as used in this chapter, shall have the following meanings:--

9 "Attorney", an attorney at law who is a member of the bar of the Commonwealth or any other
10 state.

11 "Commissioner", the commissioner of insurance.

12 "Company", a business entity organized to administer prepaid legal services plans.

13 "Covered dependents", dependents of member for whom covered legal services are provided
14 under a prepaid legal services plan.

15 "Covered legal services", legal services for which benefits are provided under a prepaid legal
16 services plan.

17 “Commissioner”, the Commissioner of Insurance

18 "License", a written certificate issued by the Commissioner of Professional Licensure,
19 authorizing a person or entity to provide prepaid legal services in the Commonwealth.

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21 “Licensee”, an individual prepaid legal services plan sales representative or prepaid legal
22 services plan company duly licensed by the Commissioner of Professional Licensure

23 "Member", a person to whom a membership certificate has been issued.

24 "Membership certificate", a contract entered into between a prepaid legal services plan company
25 and a member under a prepaid legal services plan.

26 "Person" means an individual or a partnership, company, corporation, association, or other
27 private group.

28 "Prepaid legal company" means a person or entity offering prepaid legal services to the general
29 public or a segment of the general public.

30 "Prepaid legal services" means legal services or reimbursement for legal services provided by an
31 individual licensed or admitted to practice law in the jurisdiction in which the services are to be
32 rendered, and which are provided in return for a predetermined, specified, periodic fee.

33 "Prepaid legal services plan", a plan whereby legal services are provided to members and their
34 covered dependents in accordance with the provisions of this chapter.

35 “Provider Attorney”, the designated attorney or law firm providing the legal services offered in a
36 prepaid legal services plan.

37 "Sales representative" means a person who sells or solicits prepaid legal services contracts to a
38 person on behalf of a company.

39 **Section 2. Exemptions**

40 For purposes of this chapter, prepaid legal plans shall not be considered insurance products and
41 prepaid legal companies and their representatives shall not be considered insurers; companies
42 and their representatives shall not be subject to the provisions of chapters 175, 175A and 176H
43 of the General Laws. The provisions of this chapter shall apply to all companies and their
44 representatives that are selling, soliciting or negotiating individual or family prepaid legal plan
45 memberships as defined by this chapter to the citizens of the Commonwealth.

46 **Section 3. Prepaid legal services plan company registration**

47 No person or entity shall engage in the sale of prepaid legal services plan contracts with any
48 individual residing within the boundaries of this Commonwealth nor shall they advertise prepaid
49 legal services within the boundaries of this Commonwealth without first obtaining a license from
50 the commissioner. The application for a license shall be in writing, shall be in a form prescribed
51 by the commissioner and shall contain the name, residential address and the address where the
52 business of the applicant is to be conducted, and if the applicant is a partnership, association,
53 corporation or other form of business organization, the names and addresses of each member,
54 commissioner and principal officer thereof, together with such further information as the
55 commissioner may require including, but not limited to, a description of the nature of the
56 business to be conducted, the proposed hours of operation on a daily basis and the area intended
57 to be served. The application shall also contain the criminal history, if any, of each member,
58 department, partner and principal officer, and a disclosure of any pending lawsuits, settled
59 lawsuits, and judgments related to fraud of each member, department, partner and principal
60 officer. The application must also be accompanied by a bond or letter of credit acceptable to the
61 commissioner in the amount of fifty thousand dollars, which must remain in force so long as the
62 prepaid legal services company does business in Commonwealth. The amount of the bond or
63 letter of credit may only be increased by regulation.

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66 **Section 4. Updated registration statements**

67 No later than March first of each year, commencing immediately after registration required in
68 section three of this chapter, a prepaid legal services company registered with the commissioner
69 must file on a form prescribed by the commissioner an updated registration statement to include
70 a sworn affirmation as to continuation of the bond or letter of credit and updated list of its
71 representatives transacting business in the Commonwealth as required in section three of this
72 chapter. Contracts offering prepaid legal services must be filed with the commissioner for
73 approval prior to being offered to the general public or a segment of the general public.
74 Approval will only be withheld if the contract is false, misleading, unfair, or deceptive or is in
75 violation of this chapter or other applicable law.

76 **Section 5. Solicitation of prepaid legal plans, appointment of sales person as company 77 representative; filing of name, address, and telephone number; renewal; fees; refusal or 78 revocation of appointment.**

79 Before any sales or solicitation activity commences, a person seeking to be involved in direct
80 selling or direct in-person or electronic solicitation of the general public or segments of the
81 general public, on behalf of a prepaid legal services company, must be appointed a representative
82 of that prepaid legal services company by filing with the commissioner, on a form prescribed by
83 the commissioner, the appointee's name, address, and telephone number. The appointment must
84 be renewed each year no later than October first. The commissioner may collect a fee of fifty
85 dollars with each initial or renewal filing and may use the proceeds to offset the costs of
86 administering and enforcing this chapter. Appointment may be refused or revoked upon a finding

87 that a prospective representative or representative has been convicted of a crime of deceit or
88 dishonesty within the previous ten years. The commissioner may from time to time establish
89 such regulations pertaining to the conduct of the business as he may deem necessary.

90 **Section 6. Sales representative; product knowledge testing**

91 The Commissioner shall, in lieu of administering a property and casualty exam, develop and
92 administer a product knowledge test to all prepaid legal services plan sales representatives that
93 will be directly involved in the selling, soliciting, and negotiating of individual or family prepaid
94 legal services plans in the Commonwealth; The division shall certify the representative has
95 sufficient knowledge about the product and furnish test results to the company upon request.

96 **Section 7. Prepaid legal services contract requirements**

97 A legal services contract must be filed with the commissioner before it is marketed, sold, offered
98 for sale, administered, or issued in the Commonwealth. Any subsequent endorsement or
99 attachment to the contract must also be filed with the commissioner before the endorsement or
100 attachment is delivered to legal services contract holders.

101 A legal services contract marketed, sold, offered for sale, administered, or issued in this state
102 must:

- 103 (a) be written, printed, or typed in clear, understandable language that is easy to read;
- 104 (b) include the name and full address of the company;
- 105 (c) include the purchase price of the contract and the terms under which the contract is sold;
- 106 (d) include the terms and restrictions governing cancellation of the contract by the company or
107 the legal services contract holder;

108 Additionally, a legal services contract marketed, sold, offered for sale, administered, or issued in
109 this state must identify:

- 110 (a) any administrator, if the administrator is not the company;
- 111 (b) the name of the legal services contract holder;
- 112 (c) include the amount of any deductible or copayment;
- 113 (d) specify the legal services and other benefits to be provided under the contract, and any
114 limitation, exception, or exclusion;
- 115 (e) specify the legal services, if any, for which the company will provide reimbursement and the
116 amount of that reimbursement;

- 117 (f) specify any restriction governing the transferability of the contract or the assignment of
118 benefits;
- 119 (g) include the duties of the legal services contract holder;
- 120 (h) include the contact information for the commissioner, including the commissioner's toll-free
121 number and electronic mail address, as well as a statement that the commissioner regulates the
122 company and the company's sales representatives;
- 123 (i) explain the method to be used in resolving the legal services contract holder's complaints and
124 grievances;
- 125 (j) explain how legal services may be obtained under the legal services contract;
- 126 (k) include a provision stating that no change in the contract is valid until the change has been
127 approved by an executive officer of the company and unless the approval is endorsed or attached
128 to the contract;
- 129 (l) include any eligibility and effective date requirements, including a definition of eligible
130 dependents and the effective date of their coverage;
- 131 (m) include the conditions under which coverage will terminate;
- 132 (n) explain any subrogation arrangements if any are included;
- 133 (o) contain a payment provision that provides for a grace period of at least 31 days;
- 134 (p) include conditions under which contract rates may be modified; and
- 135 (q) include any other items required by the commissioner as determined by regulation

136 **Section 8. Provider attorney requirements**

137 A provider attorney must:

- 138 (a) be licensed in the jurisdiction in which the legal services are performed;
- 139 (b) be in good standing with the entity that licenses attorneys in that jurisdiction; and
- 140 (c) maintain professional liability and errors and omissions insurance with minimum annual
141 limits of \$100,000 for each occurrence and \$300,000 in the aggregate.

142 **Section 9. Company interference with attorney's duties prohibited**

143 A prepaid legal services company may not interfere with the attorney-client relationship or with
144 the provider attorney's independent exercise of professional judgment.

145 **Section 10. Company records**

146 A company shall maintain accurate accounts, books, and other records regarding transactions
147 regulated under this chapter. The company's records must include:

148 (a) a copy of each unique form of legal services contract to be filed with the commissioner

149 (b) the name and address of each legal services contract holder;

150 (c) a list of the sales representatives authorized by the company to market, sell, or offer to sell the
151 company's legal services contracts;

152 (d) a copy of each contract entered into between the company and a provider attorney; and

153 (e) a list of complaints the company has received from legal services contract holders, including
154 the name of the sales representative involved in the transaction leading to the complaint.

155 The records required by this section may be maintained in an electronic medium or through other
156 recordkeeping technology. If a record is not in a hard copy, the company must be able to
157 reformat the record into a legible hard copy at the request of the commissioner. Except as
158 provided, a company shall retain the records required by this section until at least the second
159 anniversary of the termination date of the specified period of coverage under the legal services
160 contract. A company that discontinues business in the Commonwealth shall retain its records
161 until the company furnishes the commissioner with proof satisfactory to the commissioner that
162 the company has discharged all obligations to legal services contract holders in the
163 Commonwealth.

164 **Section 11. Terminating a prepaid legal services contract**

165 A legal services contract holder may terminate the legal services contract if the legal services
166 contract holder provides the company with written notice of the legal services contract holder's
167 intention of terminating the contract not later than the seventh day after the date the legal
168 services contract holder receives the contract.

169 **Section 12. Voiding a prepaid legal services contract**

170 If a legal services contract holder terminates a legal services contract in accordance with Section
171 12 of this chapter and the holder has not sought legal services under the contract before the
172 contract is terminated, the contract is void. A legal services contract holder may void the legal
173 services contract at a later time as provided by the contract. If a legal services contract is voided,
174 the company shall refund to the legal services contract holder or credit to the account of the legal
175 services contract holder the full purchase price of the contract. If the company does not pay the
176 refund or credit the legal services contract holder's account before the 60th day after the date the
177 contract is voided, the company is liable to the legal services contract holder for a penalty each
178 month an amount remains outstanding. The monthly penalty may not exceed 10 percent of the
179 amount outstanding. The right to void a legal services contract is not transferable.

180 **Section 13. Canceling a prepaid legal services contract**

181 A company may cancel a legal services contract by mailing a written notice of cancellation to the
182 legal services contract holder at the legal services contract holder's last known address according
183 to the records of the company. The company must mail the notice before the fifth day preceding
184 the effective date of the cancellation. The notice must state the effective date of the cancellation
185 and the reason for the cancellation. The company is not required to provide prior notice of
186 cancellation if the legal services contract is canceled because of:

- 187 (a) nonpayment of the consideration for the contract;
- 188 (b) a material misrepresentation by the legal services contract holder to the company;
- 189 (c) a substantial breach of a duty by the legal services contract holder; or
- 190 (d) cancellation of the contract by the legal services contract holder.

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192 **Section 14. Complaints**

193 A subscriber aggrieved by a prepaid legal company or its representative may file a complaint
194 with the Consumer Complaint Information Section under the Public Protection Bureau in the
195 Office of the Massachusetts Attorney General.

196 **SECTION 2. The commissioner shall prepare and institute a legal services exam to**
197 **prospective prepaid legal services plan representatives, as required by section 6 not later**
198 **than 90 days after the effective date of this act.**

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