

## **CHAPTER 26.1-19 PREPAID LEGAL SERVICES**

### **26.1-19-01. Interpretation.**

This chapter must be interpreted liberally to achieve the following purposes:

1. To encourage development of effective and economic methods of making legal services available to the public in this state.
2. To allow development of legal service plans and encourage experimentation with innovative methods of organizing and administering those plans.
3. To encourage competition among the various entities organized under this statute.
4. To ensure maintenance of a high level of competence and adherence to professional standards.

### **26.1-19-02. Definitions.**

As used in this chapter:

1. "Evidence of coverage" means any certificate, agreement, or contract issued to a participant setting out the coverage to which the participant is entitled.
2. "Legal services" means any services normally provided by or at the direction of an attorney.
3. "Participant" means an individual who is enrolled in a prepaid legal services plan.
4. "Prepaid legal services organization" means any person who undertakes to provide an arrangement for one or more legal service plans.
5. "Prepaid legal services plan" means any arrangement whereby any person undertakes to provide, arrange for, pay for, reimburse, or indemnify on a prepaid basis all or part of the cost of legal services and related expenses and court costs incurred in the exercise of any legal right, but not including payment of fines, penalties, judgments, or assessments.
6. "Provider" means any attorney licensed or otherwise authorized to practice law in this state.

### **26.1-19-03. Exceptions.**

This chapter does not apply to:

1. Commercial insurers licensed or authorized to do business in this state or to any nonadmitted insurers.
2. Retainer contracts made by attorneys with individual clients with fees based upon an estimate of the nature and amount of services to be provided to a specific client and similar contracts made with a group of clients involved in the same or closely related legal matters.
3. Plans providing no benefits other than consultation with and advice by an attorney in connection or combination with referral services.
4. The furnishing of legal services on an informal basis, involving neither an express contractual obligation nor reasonable expectations, in the context of an employment, membership, educational, or similar relationship.
5. Employee welfare benefit plans as defined by the Employee Retirement Income Security Act of 1974 [Pub. L. 93-406; 88 Stat. 829].

### **26.1-19-04. Establishment of a prepaid legal services organization.**

1. Notwithstanding any law of this state to the contrary, any person may apply to the commissioner for and obtain a certificate of authority to establish and operate a prepaid legal services organization in compliance with this chapter. A person may not establish or operate a prepaid legal services organization in this state, or sell, offer to sell, or solicit offers to purchase or receive advance or periodic considerations in conjunction with a prepaid legal services plan without obtaining a certificate of authority under this chapter. A foreign corporation may similarly apply for a certificate

- of authority under this chapter, subject to obtaining a certificate of authority as a foreign corporation under section 10-19.1-136.
2. Every prepaid legal services organization as of July 1, 1981, shall submit an application for a certificate of authority under subsection 3. The applicant may continue to operate until the commissioner acts upon the application. If the application is denied under section 26.1-19-06, the applicant must be treated as a prepaid legal services organization whose certificate of authority has been revoked.
  3. The application for a certificate of authority must be made in a form prescribed by the commissioner and be verified by an officer or authorized representative of the applicant and must set forth or be accompanied by:
    - a. A copy of the basic organizational documents of the applicant, if any, including articles of incorporation, articles of organization, partnership agreements, trust agreements, or other applicable documents.
    - b. A copy of the bylaws, regulations, or similar documents, if any, regulating the conduct of the internal affairs of the applicant.
    - c. A list of the names, addresses, and official capacities within the organization of all persons who are responsible for the conduct of the affairs of the applicant, including all members of the governing body, the officers and directors in the case of a corporation, the managers and governors in the case of a limited liability company, the partners under a partnership, the trustees under a trust agreement, and the members or owners under any other organizational form.
    - d. A statement generally describing the organization, its enrollment process, its administrative operations, any cost and quality control assurance mechanisms, its internal grievance procedure, the method it proposes to use to enroll members, the geographic area or areas to be served, the location of its office or offices, the number of providers to be utilized, and the recordkeeping system which will provide documentation of the utilization of plan benefits by enrolled participants.
    - e. A power of attorney duly executed by the applicant, if not domiciled in the state, appointing the commissioner and the commissioner's successors in office and duly authorized deputies as the true and lawful attorneys of the applicant in and for this state upon whom all lawful process may be served in any legal action or proceeding against the organization on a claim for relief arising in this state.
    - f. Copies of all contract forms the organization proposes to furnish to enrolled participants.
    - g. Copies of all contract forms the organization proposes to enter into with providers.
    - h. Copies of the forms evidencing coverage to be issued to enrolled participants.
    - i. Copies of the forms of group contracts, if any, which are to be issued to employers, unions, trustees, or other organizations.
    - j. A statement of the financial condition of the organization, including income statement, balance sheet, and sources of funds.
    - k. A description of the proposed marketing techniques and copies of any proposed advertising materials.
    - l. A schedule of rates with any available actuarial and other data.
    - m. Any other information the commissioner requires to make the determinations required under section 26.1-19-06.

**26.1-19-05. State bar association - Advisory committee.**

1. Upon receipt of an application for issuance of a certificate of authority, the commissioner shall transmit copies of the application and accompanying documents to the state bar association of North Dakota.
2. An advisory committee to assist the commissioner in the development of rules governing the conduct of organizations authorized under this chapter is created. The committee consists of seven members appointed by the board of governors of the state bar association of North Dakota. Members of the committee are allowed expenses for travel, board, and lodging in the performance of their duties as provided

in sections 44-08-04 and 54-06-09. Members of the committee have the right to participate in any hearing held under this chapter and must receive notice of any order or decision of the commissioner.

**26.1-19-06. Issuance of a certificate of authority.**

The commissioner shall issue a certificate of authority to any person filing an application within sixty days after the filing unless the commissioner notifies the applicant during that time that the application is not complete or sufficient and the reasons therefor, that payment of the fees required by section 26.1-19-15 has not been made, or that the commissioner is not satisfied that:

1. The basic organizational documents of the applicant, when combined with the powers enumerated in section 26.1-19-07, permit the applicant to conduct business as a legal services organization.
2. The organization has demonstrated the intent and ability to provide the services in a manner which ensures their availability and accessibility.
3. The organization is financially responsible and may be reasonably expected to meet its obligations to its enrolled participants. In making this determination the commissioner shall consider:
  - a. Any agreement with an insurer or any other organization paying, contracting to pay for, or in any way guaranteeing the provision of legal services under the plan.
  - b. Any agreement with the providers for the furnishing of legal services under the plan.
  - c. The adequacy of working capital.
  - d. Any surety bond or deposit of cash or securities as a guaranty that plan services will be performed.

**26.1-19-07. Powers of organization.**

The powers of a holder of a certificate of authority issued pursuant to section 26.1-19-04, in addition to any other powers conferred by law, include the following:

1. The purchase, lease, construction, renovation, operation, or maintenance of facilities and property reasonably required for the delivery of services or for such purposes as may be reasonably necessary to the operation of the organization.
2. The furnishing of legal services on a prepaid basis under agreements of indemnity with plan enrollees or under service contracts with providers who are under contract with, employed by, or otherwise associated with the prepaid legal services organization.
3. The marketing and administration of prepaid legal services plans or contracting with any person for the performance of these functions on its behalf.
4. Contracting with an insurance company licensed or authorized to do business in this state for the provision of insurance, indemnity, or reimbursement against the cost of legal services provided by a prepaid legal services organization.

**26.1-19-08. Contract forms.**

1. All contracts or other documents evidencing coverage issued by the prepaid legal services organization to participants and marketing documents purporting to describe the organization's prepaid legal services plan must contain:
  - a. A complete description of the legal services to which the participant is entitled.
  - b. The predetermined periodic rate of payment for legal services, if any, which the participant is obligated to pay.
  - c. All exclusions and limitations on services to be provided, including any deductible or copayment feature and all restrictions relating to preexisting conditions.
  - d. All criteria by which a participant may be disenrolled or denied reenrollment.
2. A contract between a legal services organization authorized to do business under this chapter and any provider or any participant may not contain any provisions which require participants to guaranty payment, other than copayments and deductibles, to the provider in the event of nonpayment by the legal services organization for any

covered services which have been performed under contracts between the participant and the legal services organization.

**26.1-19-09. Control prohibited.**

A prepaid legal services organization may not attempt to control any attorney in the exercise of the attorney's professional judgment.

**26.1-19-10. Licensing of sales representatives.**

The sales representatives of a prepaid legal services organization are subject to the laws pertaining to insurance producers as defined in chapter 26.1-26. The license for a sales representative must be issued on a form prescribed by the commissioner, and the fee for a license or renewal thereof shall be prescribed in section 26.1-01-07.

**26.1-19-11. Prohibited practices.**

1. A prepaid legal services organization, or representative thereof, may not cause or knowingly permit the use of advertising, solicitation, or any form of coverage which is false, fraudulent, misleading, or deceptive. For the purposes of this section:
  - a. A statement or item of information is false if it does not conform to fact in any respect which is or may be significant to a participant, or a person considering participating in a legal services plan.
  - b. A statement or item of information is misleading, whether or not it may be literally untrue, if, in the context in which the statement is made or the item of information is communicated, the statement or item of information may be reasonably understood by a reasonable person, not possessing special knowledge regarding legal services coverage, as indicating any benefit or advantage or the absence of any exclusion, limitation, or disadvantage of possible significance to a participant, or person considering participating in a legal services plan, if that benefit or advantage or absence of limitation, exclusion, or disadvantage does not in fact exist.
  - c. An evidence of coverage is deceptive if the evidence of coverage taken as a whole and with consideration given to typography and format and language is such as to cause a reasonable person, not possessing special knowledge regarding legal services plans and evidence of coverage thereof, to expect benefits, services, or changes which the evidence of coverage does not provide or which the legal services plan issuing such evidence of coverage does not regularly make available for participants covered under the evidence of coverage.
2. A participant's coverage may not be canceled or nonrenewed except for the failure to pay the charge for that coverage, or for other reasons as may be set out in a rule adopted by the commissioner.
3. A prepaid legal services organization may not use in its name, contracts, or literature the words "insurance", "casualty", "surety", or "mutual", or any other words descriptive of the insurance, casualty, or surety business or similar to the name or description of any insurance or surety corporation doing business in this state.

**26.1-19-12. Complaint system.**

1. A prepaid legal services organization shall establish and maintain a complaint system which has been approved by the commissioner to provide reasonable procedures for the resolution of complaints initiated by participants concerning any aspect of the prepaid legal services plans operated by the organization.
2. A prepaid legal services organization shall submit to the commissioner an annual report in a form prescribed by the commissioner which must include:
  - a. A description of the procedure used under the complaint system.
  - b. The total number of complaints by type handled through the complaint system.
  - c. The disposition of all complaints filed under the system.

3. A prepaid legal services organization shall maintain records of complaints, shall retain those records for a period of three years, and shall make those records available for inspection by the commissioner; provided, however, that no information regarding a participant or an attorney considered protected by the confidential nature of the attorney-client relationship may be divulged without written consent of the participant or upon appropriate court order.
4. Complaints alleging misfeasance, malfeasance, or nonfeasance on the part of the attorneys or complaints alleging violations of the code of professional responsibility must be submitted to the disciplinary board of the supreme court for disposition.

**26.1-19-13. Reports to the commissioner.**

Every prepaid legal services organization annually, on or before March first, shall file a report with the commissioner, verified by an appropriate official of the organization, showing its financial condition on the last day of the preceding calendar or fiscal year. The report must include:

1. A financial statement of the organization, including its balance sheet and statement of income and expenditures for the preceding year prepared by an independent certified public accountant.
2. Any changes in the information submitted initially upon application for a certificate of authority under section 26.1-19-04.
3. Any other information relating to the performance of the organization which the commissioner may require to carry out the commissioner's duties under this chapter.

**26.1-19-14. Examinations.**

1. The commissioner shall make an examination of the operations of any prepaid legal services organization holding a certificate of authority under this chapter. The examination must include all contracts, agreements, and arrangements for the delivery of services under the plan as often as the commissioner deems necessary, but not less frequently than once every three years.
2. The commissioner shall make an examination concerning the delivery of legal services of any prepaid legal services organization by reviewing any complaints made by participants brought against the organization or against providers with whom the organization has contracts or other agreements as often as the commissioner deems necessary, but not less frequently than once every three years.
3. Every prepaid legal services organization shall make its books and records relating to its operations available to the commissioner to facilitate the examination.
4. The commissioner may not undertake an examination which would violate the attorney-client privilege except with the written consent of the participant.
5. For the purpose of examination, the commissioner may issue subpoenas, administer oaths to, and examine the officers and insurance producers of the prepaid legal services organization, as well as any providers of services.

**26.1-19-15. Fees.**

A prepaid legal services organization shall pay to the commissioner:

1. For filing a copy of its application for a certificate of authority or amendment thereto, the amount provided by section 26.1-01-07.
2. For filing an annual report, the amount provided by section 26.1-01-07.
3. The expenses of any examinations conducted pursuant to section 26.1-19-14.

**26.1-19-16. Administrative findings and sanctions.**

1. The commissioner, consistent with chapter 28-32, may initiate proceedings to determine if a prepaid legal services organization has:
  - a. Operated in a manner that materially violates its organizational documents;
  - b. Materially breached its obligations to furnish the legal services specified in its contracts with enrolled participants;

- c. Violated this chapter, or any rule adopted under this chapter;
  - d. Made any false statement with respect to any report or statement required by this chapter or by the commissioner under this chapter;
  - e. Advertised, marketed, or attempted to market its services in a manner which misrepresents its services or its capacity to deliver services, or engaged in deceptive, misleading, or unfair practices with respect to advertising or marketing; or
  - f. Attempted to prevent the commissioner from the performance of any duty imposed by this chapter or by other laws of this state.
2. After providing written notice and an opportunity for a hearing pursuant to chapter 28-32, the commissioner shall make administrative findings and, as appropriate, may:
    - a. Impose a penalty of not more than five thousand dollars for each unlawful act committed under this chapter;
    - b. Issue an administrative order requiring the prepaid legal services organization to cease or modify inappropriate conduct or practices by it or any of the personnel employed by or associated with it, to fulfill its contractual obligations, to provide a service which has been improperly denied, or to take steps to provide or arrange for any services which it has agreed to make available; or
    - c. Suspend or revoke the certificate of authority of the prepaid legal services organization.
  3. If its certificate of authority is suspended, the prepaid legal services organization may not, during the period of suspension, enroll any additional participants and may not engage in any advertising or solicitation.
  4. If its certificate of authority is revoked, the prepaid legal services organization shall proceed under the supervision of the commissioner, immediately following the effective date of the revocation, to wind up its affairs, and may conduct no further business except as may be essential to the orderly conclusion of those affairs. The commissioner, by written order, may permit further operation of the organization if it is in the best interest of the participants and will allow the participants the greatest practical opportunity to obtain continued legal services coverage.
  5. The commissioner may apply to any court for the legal or equitable relief deemed necessary to carry out the purposes of this chapter.

**26.1-19-17. Statutory construction and relationship to other laws.**

Except as otherwise provided in this chapter, other provisions of the insurance laws of this state are not applicable to any legal services organization issued a certificate of authority under this chapter.

**26.1-19-18. Rulemaking authority of commissioner.**

The commissioner may adopt reasonable rules necessary and proper to carry out this chapter. This chapter does not prohibit the commissioner from requiring changes in procedure previously approved.