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Brian Heid
Eitan Misulovin

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THE GROUP LEGAL PLAN REVOLUTION: BRIGHT HORIZON OR DARK FUTURE?

I. INTRODUCTION

Mention the words ‘group legal plan’ or ‘prepaid legal plan,’ and lawyers and laymen alike may say, “I’ve never heard of them.” This is surprising, however, since this form of legal services is quickly becoming an integral part of the American legal landscape. Estimates as of April 1999 place the number of Americans covered by some type of legal coverage plan at approximately 110 million people. A study undertaken by Hewitt Associates, a management consulting firm based in Illinois, predicts that as many as one in five large companies nationwide will be offering group legal plans by the end of the year 2000.

Group legal plans are becoming big business, as exemplified by one of its largest publicly traded companies, Pre-Paid Legal Services, Inc. which has seen its stock price soar, almost doubling in less than one year. Insurance companies are also getting into the picture due in part to the demand for group legal plans from their larger institutional clients.

2. See Clarke Canfield, Lawyers To Go: Some Mainers Are Taking Care of Their Legal Needs Through Prepaid Services, PORTLAND PRESS HERALD, Apr. 27, 1999, at C1.
3. See id. (stating figures gathered by the National Resource Center for Consumers of Legal Services, an industry trade group based in Virginia). These estimates include coverage provided by “personal, business, union, military, and employee benefit plans.” Id.
5. See Andrea Gerlin, Companies See Legal Plans as Cheap Perk, WALL ST. J., Mar. 14, 1995, at B1 (discussing the interest of both Metropolitan Life Insurance Co. (MetLife) and its customers in obtaining group legal services which the company did not offer at the time).
Furthermore, profit margins on group legal services are estimated to hover around fifteen percent, a number that is nearly four times greater than that for group health plans. Thus, the president of Pre-Paid Legal Services, Inc. may not have been exaggerating when he stated that the company’s motto is “[w]e’re an idea whose time has come.”

Part II of this note will examine the growth of group legal plans and the reasons for their massive expansion into corporate human resource benefits programs, as well as the legal arena. Part III will discuss how the plans generally work, what benefits they offer, and their niche in the legal hierarchy. Part IV will note the flaws with the various plans, discussing whether this is simply a case of marketing rather than an offering of a new legal service to consumers. Part V will look at the ethical dilemmas that may be associated with the legal equivalent of ‘managed healthcare’ and a corporation’s supervision of a lawyer’s practice. Part VI will focus on the possible ramifications of the rise of group legal plans and their effect on the legal community. Finally, Part VII will examine what precautions must be considered to maintain quality legal representation during the forthcoming crucial years of expansion of group legal services. This section will also analyze what needs to be done to protect attorneys from the negative perception that has become synonymous with managed health care plans and the doctors associated with them.

II. THE GROWTH OF GROUP LEGAL PLANS

With the success of the United States’ financial markets in the 1990s, companies have grown, merged, and expanded their reach to markets never before imagined. This expansion has spurned a demand in the marketplace for skilled labor. Applying the economic theory of

Subsequent to the publication of Gerlin’s article, MetLife purchased Hyatt Legal Plans of Cleveland, Ohio, one of the major players in the group legal plans field. See Craig Gunsauley, All Aquiver: Prepaid Legal Providers Hope To Boost Their Benefits Market Share By Teaming With Large Insurers, EMPLOYEE BENEFIT NEWS, May 1, 1998, at 43, 44 (stating that although Metlife would continue to make Fortune 500 companies its priority, it intended to mass-market the services of Hyatt to individuals and to develop new legal service products for this expanding marketplace).

7. See Gerlin, supra note 6.
8. Segal, supra note 1.
10. See Nia-Malika Henderson, Desperately Seeking Skilled Applicants, N.Y. TIMES, Oct. 4, 2000, at G1; William Pesek, Jr., How Does Greenspan Tell Congress His Fears That Too Many People are Working?, BARRON’S, Jul. 19, 1999, at 46; Gene Epstein, Greenspan Should Stop
prices to the labor market, an increase in demand for labor, coupled with a fairly constant supply level of skilled labor, will naturally cause prices to rise. Further, when one is discussing increased compensation for employment, these figures translate into higher wages, better working conditions, and improved benefit plans.

Over the last ten years, wages paid to employees in the United States have increased at an annual rate of approximately 3.6%. Similarly, employees today enjoy working conditions that once seemed unattainable. In addition to meeting statutorily required standards, employers are luring employees by offering such benefits as casual dress codes, shift work, and flexible scheduling of work hours. Furthermore, in order to differentiate themselves from their competitors and attract the most qualified and dedicated employees, firms have begun providing more desirable benefit plans to their workforce. In the past, businesses have offered such programs as pension plans, medical benefits, and various group insurance plans. One type of employee benefit program


11. See generally THOMAS FREDERICK DERNBURG & JUDITH DUIKER DERNBURG, MACROECONOMIC ANALYSIS: AN INTRODUCTION TO COMPARATIVE STATICS AND DYNAMICS (1969) (explaining macroeconomic principles of supply and demand and their corresponding effects on prices).

12. See Sana Siwolop, At More Companies, Benefits Without the Wait, N.Y. TIMES, Aug. 27, 2000, at BU 9 (noting that new employees can join benefit plans “as soon as they walk in the door” rather than having to wait months or years to be eligible); Salary Declines As Incentives, Benefits Grow, Conference Told, 15 Pens. & Ben. Rep. (BNA) 883 (May 30, 1988).


15. See Thomas M. Beers, Flexible Schedules and Shift Work: Replacing The ‘9-to-5’ Workday?, MONTHLY LAB. REV., June 2000, at 33, 33 (discussing shift work and flexible hours); Kenneth Bredemeier, How to Avoid Dressing-Down At the Office, WASH. POST, Jul. 26, 2000, at E1 (discussing casual dress); Lea Goldman, The Butler Did It, FORBES, Sept. 11, 2000, at 76 (discussing flexible hours).

16. See Segal, supra note 1.

17. See Siwolop, supra note 12 (“40 percent of companies let new employees join 401(k) plans within their first three months in 1999, up from 32 percent the previous year.”).

18. See id. (noting how corporations are reducing the waiting period generally required for access to medical benefits).

19. See Juan Hovey, Disability Benefits Enable Firms to Be More Worker-Friendly, L.A. TIMES, Dec. 1, 1999, at C9 (analyzing how companies are attracting employees with group disability insurance, which is generally more desirable to the average employee than group term life insurance).
that is quickly gaining favor in the American marketplace is the group legal plan. 20

Group legal plans have existed in Europe since the 1930s and were subsequently introduced in the United States in the 1960s. 21 However, it was not until recently that a growing number of companies, such as American Express, Microsoft, AT&T, and Tower Records, became cognizant of group legal plans and began implementing this form of employee benefit program. 22 In explaining the growing popularity of group legal plans, an executive vice-president at Pre-Paid Legal Services, Inc. stated:

A lot of employers would love to give their employees a raise, but at the present time, their financial situation just doesn't warrant it. But they can afford $3 or so a week. Now if you offered them that kind of raise, employees would probably be mad. But by providing a prepaid legal plan, employers can show concern for their employees and make them feel better. 23

Companies that offer group legal plans have been actively marketing the proposition that "[f]or around $180 a year per employee, less than the average cost of one hour with an attorney, a voluntary group legal plan is


21. See Canfield, supra note 2; see also Jennifer Click, The Ins and Outs of Prepaid Legal Plans, HRMAGAZINE, Jan. 1, 1998, at 66, 67 (stating that group legal plans have existed in the United States for almost 30 years); David Schlaifer, 10 Tips for Evaluating Group Legal Plans, EMPLOYEE BENEFIT NEWS, Dec. 1998, at 52, 52 (discussing that group legal plans have been available in Europe for almost seventy-five years). Today, nearly two-thirds of European citizens are covered by group legal plans. See id.


23. Click, supra note 21, at 69 (quoting Ken Moore, executive vice-president of group sales); see also E-mail from Marcia L. Messett, Director of Group Sales, Hyatt Legal Plans, Inc., to Eitan Misulovin (Oct. 21, 1999) (on file with the Hofstra Labor & Employment Law Journal) (describing advantages to the employer to include eligibility of all employees with no minimum participation requirement; recruiting and retaining quality employees; extending "work life" assistance for better workplace efficiency; and the management of administrative costs and premiums).
Prepaid legal benefits have helped employers meet their employees' legal service needs because they are simple and cost effective. Group legal plans are extremely low-maintenance, requiring surprisingly little time and effort from benefits directors to manage. The benefits plan, which acts as a type of insurance policy for legal dilemmas, is a voluntary employee program that can be paid either by the employer or the employee. While the vast majority of programs require employees to pay premiums through automatic deductions from their salary, some corporations, such as AT&T, have chosen to pay for the plan outright. Nonetheless, institutions can offer a cafeteria-style benefits package that allows employees the opportunity to pick and choose the benefits they desire, such as life, health, and disability insurance, as well as group legal services.

Group legal plans enjoyed positive tax treatment until Congress
ended their favorable status in 1992.32 Despite the elimination of this tax treatment, the expansion of these services has not diminished.33 Today, many employees of companies enrolled in group legal plans can still enjoy some favorable tax relief by paying their monthly deductions with pre-tax income when enrolled in a flexible benefits plan.34 Meanwhile, other enrollees simply pay with after-tax income deductions.35 However, due to their low cost, group legal plans have faced very little opposition from either employers or employees.36

III. HOW GROUP LEGAL PLANS WORK

The cost of a group legal plan varies depending upon the range of services offered and the size of the workforce that enrolls in the program.37 In order to accommodate a particular employer, most providers are willing to design a plan that is tailored to meet the needs of the company's workforce.38 A group legal plan's premiums can range from as low as $1 to as high as $25 per month.39 However, monthly premiums paid by legal plan members are, on average, between $12 and $20.40 Once these fees have been paid, there are no additional charges for those benefits included in the plan, with the exception of certain co-payments and deductibles that may apply.41

34. See Segal, supra note 1 (quoting Linda Abbondanzo, a Pre-Paid member, who described her satisfaction with her plan as "the best $16 a month I spend").
35. See Schlaifer, supra note 21, at 52 (discussing scope of services); Gerlin, supra note 6 (discussing the size of the workforce).
36. See Click, supra note 21, at 67.
37. See Schlaifer, supra note 21, at 52 (discussing scope of services); Gerlin, supra note 6 (discussing the size of the workforce).
38. See Click, supra note 21, at 67.
39. See Schlaifer, supra note 21, at 52.
40. See Click, supra note 21, at 67.
Most prepaid legal service plans rely on a panel of lawyers in private practice. These panels may vary from one attorney or firm servicing a small group under formal contract, to a national network of law firms that have agreed to provide services for all plan subscribers. The lawyers enrolled in the various plans are often required to meet certain qualification procedures that may include a minimum number of years in active practice, academic requirements, and screening processes that investigate the potential network member with the state and local bar associations. Additionally, networks may require their members to carry professional liability insurance with a minimum of $100,000 coverage for legal malpractice.

These plans can be described as legal preferred provider organizations (PPO), much like their equivalents in the healthcare field. For example, the subscriber often has the option to choose either an in-network or out-of-network attorney. When the employee decides to use an attorney within the preferred directory of legal service providers, the plan user does not incur any out-of-pocket expenses. However, when the user decides that he or she would prefer to go outside the plan, perhaps to a lifelong family lawyer not enrolled in the network, the plan will reimburse the user for their out-of-pocket expenses at a pre-negotiated rate. This is very similar to the manner in which a patient who is part of a healthcare PPO would be reimbursed if the patient went beyond the network to an outside doctor.

The most basic form of group legal service is usually referred to as

42. See Julia Field Costich, Note, Joint State-Federal Regulation of Lawyers: The Case of Group Legal Services Under ERISA, 82 KY. L.J. 627, 635 n.63 (1993-94) (describing the different types of legal service plans). The plans fall into one of three formats: open panel plans, closed panel plans, and mixed plans. Open panel plans allow the subscriber to select their own attorney, subject to the limits of the contract and the qualifications of the attorney. Closed panel plans restrict the subscriber from selecting from a group of predetermined attorneys who are affiliated with that plan. Lastly, mixed plans offer "advice and basic services [that] are provided by a selected group of lawyers, while other lawyers are used for more extensive services, subscribers who reside in other states, and where a conflict of interest arises." Id.


44. See Click, supra note 21, at 68. Generally, these minimum requirements are not an issue since, most of the lawyers in the networks tend to be in their mid-career, having ten to fifteen years of experience in the field. See id. at 67 (referring to remarks by Bill Badger, executive director of the National Resource Center for Consumers of Legal Services).

45. See id. at 68.

46. See Hall, supra note 32, at 130; Gerlin, supra note 6; Click, supra note 21, at 66.

47. See Click, supra note 21, at 66.

48. See id. at 67.

49. See id. at 66–67.
the access/discount plan.\textsuperscript{50} It provides an employee, their spouse, and any dependents, with accessible legal guidance and consultation.\textsuperscript{51} This service is usually available over the telephone and is limited to simple legal issues.\textsuperscript{52} If an employee is interested, they may call a toll-free number to access the provider's program.\textsuperscript{53} The program administrator may then route the call, perhaps by using the employee's zip code, to locate the nearest attorneys participating in the plan.\textsuperscript{54} This is actually a reasonable proposition, since group legal plan providers have found that as many as seventy percent of the situations that plan members call about are resolved over the telephone.\textsuperscript{55}

This type of plan may also include such services as the examination of basic legal documents, the drafting of simple wills, and short correspondences, written or by phone, to an opposing party.\textsuperscript{56} Additional representation or in-office service is available to all plan members at a discounted rate from a selection of attorneys belonging to the provider's network.\textsuperscript{57} Some plans provide many of these benefits without restrictions and at no additional price.\textsuperscript{58} Costing $5 to $10 a month, access/discount plans have the lowest monthly fees.\textsuperscript{59}

At a slightly higher monthly premium, usually ranging from $13 to $23, the employee is eligible to receive a more expansive level of services usually referred to as a comprehensive plan.\textsuperscript{60} In addition to the services provided by the access/discount plan, a comprehensive plan provides for personal legal consultation at the attorney's office, preparation of more complex legal documents, and both trial and

\begin{thebibliography}{99}
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\item \textsuperscript{50} See Brennan, supra note 20, at 47.
\item \textsuperscript{51} See id.; see also O'Donoghue, supra note 22.
\item \textsuperscript{52} See Brennan, supra note 20, at 47. Emergency service is sometimes available for 24 hours a day. See Schlaifer, supra note 21, at 53 (discussing how 24 hour emergency service should be an important feature of any plan a company would consider).
\item \textsuperscript{53} See Brennan, supra note 20, at 48.
\item \textsuperscript{54} See id.; see also E-mail from Shauna Mahan-Pompei, Vice-President of Compensation and Benefits, Tower Records, Inc., to Eitan Misulovin (Oct. 12, 1999) (on file with the Hofstra Labor & Employment Law Journal) (stating how using the zip code of the plan member is helpful in locating a local attorney affiliated with the plan).
\item \textsuperscript{55} See O'Donoghue, supra note 22 (noting figures provided by Jim Brennan, president of Midwest Legal Services).
\item \textsuperscript{56} See American Prepaid Legal Services Institute, Legal Plan Connection, at http://www.abanet.org/api/home.html (last visited on Oct. 4, 1999) (on file with the Hofstra Labor & Employment Law Journal).
\item \textsuperscript{57} See Click, supra note 21, at 68. These discounts average about twenty-five percent off the attorney's regular rate. See Bell, supra note 27.
\item \textsuperscript{58} See Schlaifer, supra note 21, at 53.
\item \textsuperscript{59} See Click, supra note 21, at 68.
\item \textsuperscript{60} See id.
\end{thebibliography}
negotiation representation.\textsuperscript{61} Some of the common legal issues covered by a more comprehensive legal plan include adoption, consumer protection, credit problems, debt collection, divorce, juvenile court proceedings, property protection, real estate transactions, traffic matters, and will preparation.\textsuperscript{62} Moreover, if the subscriber wishes to obtain legal services beyond those covered in their plan, they may be able to obtain this extended representation at a discounted rate.\textsuperscript{63}

Many consumers are delighted with the services provided by both plans, describing in glowing terms how group legal plan lawyers have represented their children in criminal proceedings,\textsuperscript{64} forced out-of-state rental tenants to pay back rent and fees,\textsuperscript{65} and led courts to dismiss traffic violations.\textsuperscript{66} Individual corporate employees are not the only groups to enroll in these plans, as small businesses are also being enticed to become independent members of legal plan networks.\textsuperscript{67}

However, it should be noted that most plans prohibit employees from using group legal services against their employer.\textsuperscript{68} This limitation is usually recommended to corporate benefits directors when setting up a group legal plan since companies would not want to offer a service that could be used against them.\textsuperscript{69} These situations may also be restricted by legislation.\textsuperscript{70}

Plan coverage may also be restricted for other legal actions. Generally, plans limit their coverage of members facing criminal charges\textsuperscript{71} and those with pre-existing cases.\textsuperscript{72} The reasons for these

\textsuperscript{61. See Brennan, supra note 20, at 47.}
\textsuperscript{62. See id.; see also Click, supra note 21, at 68-69.}
\textsuperscript{63. See Segal, supra note 1.}
\textsuperscript{64. See O'Donoghue, supra note 22 (describing how a lawyer from a group legal plan helped a plan member obtain a favorable legal outcome after her daughter was accused of theft).}
\textsuperscript{65. See Canfield, supra note 2 (explaining how a Pre-Paid Legal Services attorney forced a Florida tenant to pay a Maine resident network member back rent, late fees and court costs totaling $1,950, money that the extremely satisfied plan member believed he would never see again).}
\textsuperscript{66. See id. (explaining how a Pre-Paid Legal Services lawyer at a traffic court hearing convinced the court to dismiss charges when the officer who issued the ticket failed to appear). The satisfied plan member is convinced that without a lawyer's presence, the traffic court hearing would have been rescheduled. See id.}
\textsuperscript{67. See Wolf, supra note 5; Bell, supra note 27 (describing how a plan member whose insurance policy for her restaurant had lapsed due to a mailing error, and after a week with no results she turned to her group legal plan attorney who quickly resolved the situation).}
\textsuperscript{68. See Gerlin, supra note 6.}
\textsuperscript{69. See Schlaifer, supra note 21, at 53.}
\textsuperscript{70. See Labor Management Relations (Taft-Hartley) Act, 29 U.S.C. § 186(c)(8) (1994) (stating that some fund plans prohibit paying for legal services for actions against an employer).}
\textsuperscript{71. See Gerlin, supra note 6; Alec M. Schwartz, A Lawyer's Guide To Prepaid Legal Services, 15 A.B.A. SEC. OF ECON LAW PRAC. (LEGAL ECON.) at 43, 49 (July/Aug. 1989).}
\textsuperscript{72. See Marci Rubin, Legal-Service Plans Cut Attorney Costs, SUN-SENTINEL (FT.
restrictions are that it would be too cost prohibitive to offer such services at the low monthly premiums of the plans. Services that are limited or excluded for economic reasons, or to avoid abuses of the benefit packages, include "representation in business matters, legal services related to class actions, patents or copyrights, appeals, small claims court actions and tax preparation." Matters stemming from an employee's abuse of drugs or alcohol are also rarely covered. Moreover, plans usually do not cover any legal action where the member is in a position that they acquire legal reimbursement or representation from other sources, such as an insurance policy or a government sponsored legal service program. Further, any legal action in which a contingent fee is customarily the method of payment to an attorney is also excluded from the plan. For a slightly higher monthly premium, employers can bargain for plans to extend to certain crimes that are rarely included, such as vehicular homicide or even a loss of driving privileges due to a charge of driving while intoxicated. A higher fee or deductible may also be required for contested divorce proceedings and civil law suits. In an action that requires extended divorce proceedings and civil law suits. In an action that requires extended legal representation, the plan member may be required to contribute both a deductible payment to the service plan attorney, as well as an additional percentage of the cost of the entire

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73. See Stephen J. Schulhofer & David D. Friedman, Rethinking Indigent Defense: Promoting Effective Representation Through Consumer Sovereignty and Freedom of Choice for All Criminal Defendants, 31 AM. CRIM. L. REV. 73, 98-101 (1993) (discussing in detail the cost-benefit analysis and inherent pitfalls in applying an insurance model system to the legal representation of criminal defendants). The two types of customers interested in obtaining a group legal plan that would cover defense of a criminal felony are those who plan to commit criminal acts (to which a high cost for such a plan would be acceptable considering the possible savings the future defendant would incur) and those plan members who do not plan to commit any criminal acts but wish to have access to discounted felony representation for simple peace of mind (though this class of customer would deserve a low price for the benefit due to the unlikelihood that the benefit will ever be used or collected upon). See id. Since the group legal plan provider cannot possibly know which class of person a plan member may fall into (since it is unlikely that a person would truthfully admit that they are, in fact, planning on committing a felony in the near future on a Group Legal Plan application), they will be forced to apply the higher cost for the benefit across the board, driving the latter consumer out of the market. See id.

74. Schwartz, supra note 71, at 49.

75. See Brennan, supra note 20, at 47-48.

76. See Schwartz, supra note 71, at 49.

77. See id. (noting that the attorney who provides legal services in such an action will be paid out of the proceeds of a successful lawsuit or settlement).

78. See Gerlin, supra note 6.

79. See Schwartz, supra note 71, at 49.
litigation, up to the amount covered by the member's legal plan.\textsuperscript{50}

What the plans ultimately offer is 24-hour access to legal consultants who are capable of providing simple, though often highly important, legal services to the group legal plan member without delivering the anxiety of huge legal bills\textsuperscript{81} or the daunting task of choosing a lawyer out of the yellow pages.\textsuperscript{82} Although the response of individuals who take advantage of their services is generally positive, the plans do not offer anything truly unique. Most of the extended legal services require additional fees and contain cost ceilings, and therefore, offer only limited savings to the consumer.\textsuperscript{83} As a result, the members needing these services find themselves in a position that is of little difference from the one they were in without the plan.

**IV. THE FLAWS OF GROUP LEGAL PLANS**

Although the plans are structured so as to satisfy the needs of both the employer and the employee, there are several issues of concern that may arise. Many critics of group legal plans have argued that the low costs to the employees may pose problems to the quality and efficiency of the plan.\textsuperscript{84} These opponents claim that the plans do not offer the type or quality of service that the employees would normally get on their own.\textsuperscript{85} Thus, the plans create a conflict between the services provided and the services that the employees are both entitled to and expect to receive.

First, the low fees charged to the groups have forced attorneys to try and maximize their profits by servicing as many claims as possible.\textsuperscript{86} As a result, these attorneys often find themselves to be overloaded.\textsuperscript{87} In an effort to handle their excessive responsibilities, attorneys are inclined

\textsuperscript{80} See id.
\textsuperscript{81} See Rubin, supra note 72 (discussing the concerns of potential legal clients and the fact that according to figures provided by the American Bar Association, the average attorney in 1998 charged $184 an hour).
\textsuperscript{82} See Canfield, supra note 2 (noting how potential legal clients avoid retaining legal counsel since they do not know who to turn to for legal services, are worried that the questions that they may ask would be considered stupid, and are fearful of high legal costs as a result of the inquiry).
\textsuperscript{83} See Schwartz, supra note 71, at 49.
\textsuperscript{84} See, e.g., Segal, supra note 1.
\textsuperscript{85} See id.
\textsuperscript{86} See Vernetta L. Walker, Legal Needs of the Public in the Future, FLA. B.J., May 1997, at 42, 44 (stating that drawbacks of the plans include "the uncertainty of caseload and low fees if one is not handling volume work"); Segal, supra note 1.
\textsuperscript{87} See Segal, supra note 1.
to expedite those clients who are covered by group legal services.\(^8\) This churning of clients can result in both the rapid preparation of documents and premature settlements; neither of which is in the best interest of the client.\(^9\) The client may also need or require face-to-face consultation or other additional services that are not available without extra costs in many of the basic plans.\(^9\)

Another problem of group legal plans may be that as employees become more dependent on these services, they may be more likely to bring the smallest of problems to the attorney’s attention.\(^9\) People would want to get the most use and service from the small amount of money that they spend on the plan.\(^2\) For example, many claims, which members would have simply disregarded in the past, would be brought to an attorney at no extra effort or cost to the employee. Therefore, by making it so easy to access these services, the legal community may be creating a more litigious society.\(^3\) The effects of increased claims would also put additional strains on the already stressed judicial system.

The attempt to maintain balance between an attorney’s own needs and his obligation to the client’s best interests may create ethical dilemmas for the practicing attorney.\(^4\) In this situation, the attorney has a duty to service all the clients enrolled in the program. Realistically, however, the attorney in the network must service enough clients in

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88. See id.

89. Cf. Dianne Molvig, Group & Prepaid Legal Service Plans: A Way to Build Your Practice?, Wis. Law., June 1999, at 10, 60 (discussing the possibility that plan attorneys may suffer from “intake burnout” leading to the deterioration of their work and skills); In re 1115 Legal Serv. Care, 110 N.J. 344, 351 (1988) (“An overriding fear . . . is that the corporation may place its own interests, whether political goals or profits, ahead of the interests of its clients.”) (quoting In re Educ. Law Ctr., Inc., 86 N.J. 124, 135 (1981)).

90. See Schwartz, supra note 71, at 44.

91. See Segal, supra note 1 (stating that many lawyers want no part of this ‘mini-stampede’ towards group legal plans). Keith Watters, a Washington solo practitioner who declined an offer to join a group legal service, stated that the plans are “not appealing to anybody with an established practice, . . . [people] view it as an open invitation to vent to their attorneys every time they have a dispute with their neighbor.” Id. Since the plan members will no longer have to search for the appropriate attorney for their needs, but rather, be placed in contact with a suitable representative at no cost to them, they might be prone to “sue at the drop of a coffee cup.” D.L. Stewart, Legal Plans Wear Like a Cheap Suit, DAYTON DAILY NEWS, Aug. 31, 1999, at 1C.

92. See Segal, supra note 1; see also Stephanie Armour, Latest Workplace Perk: A Lawyer, USA TODAY, Aug. 30, 1999, at 1A.

93. See Segal, supra note 1 (quoting Keith Watters as stating, “[p]eople in these plans come to you with a lot of seemingly real problems that just aren’t economically feasible to litigate”).

94. See Robert B. McKay, Law, Lawyers, and the Public Interest, 55 U. Cin. L. Rev. 351, 365 (1986) (“[t]he legal profession continues to be dominated in considerable part by manifestations of self-interest, often in disregard of the public interest and even the interests of clients.”).
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order to remain profitable. Thus, profitable firms may be saturated with prepaid clients' claims, and new claims may have to take a back seat or existing claims will have to be expedited, often in a less effective manner.

Moreover, many critics argue that by charging such modest fees, the service providers are "primarily attract[ing] inexperienced lawyers." Since these plans are often limited to personal services and representation for minor claims and actions, the attorneys associated with these networks rarely face complex or challenging litigation. Consequently, the low fees and less demanding work have caused typical corporate law firms and large firms with established practices, which often employ the most reputable and qualified attorneys, to express little or no interest in associating themselves with these programs.

Essentially, what group legal plans seem to be offering, rather than a new service or a revolutionary way of handling society's legal concerns, is simply a different way of marketing lawyers and law firms to the public-at-large. Rather than making a name for themselves in the local community by attending practice-building functions, such as civic clubs or business meetings, attorneys can instead be guaranteed a steady source of income from a prepaid legal plan.

It has been argued that many of the services that are offered by group legal plans are available elsewhere, often at no cost at all. For example, many attorneys already provide for free consultations. Some organizations offer legal phone advice through monthly free-of-charge "Call-A-Lawyer" programs. Further, when it comes to the actual fees,
in order to attract potential clients, most lawyers will negotiate payment plans that are both convenient and fit their clients' personal needs. By offering these features, an attorney who is not a member of a group legal plan can be just as cost effective for clients as an attorney who is part of a legal plan network.

As a result of this core marketing function, small to medium sized law firms, as well as some insurance providers have become the main suppliers of group legal services. Law firms enter this emerging field because it enables them to establish a name for themselves while attaining greater visibility and, therefore, demand through a constant flow of clients. The emergence of group legal benefits from insurance and financial institutions is due to their desire to offer a full line of insurance and other employment benefits from only one source. This co-marketing venture benefits both the attorneys and the insurance companies. Lawyers benefit since they are often restricted from openly advertising themselves due to court rules and ethics codes, even in this period of relaxing regulations in those areas. Similarly, insurance companies are enthusiastic to market and advertise group legal plans due to the high profit margins of such plans, despite the substantial effort and capital required. Insurance companies are also interested in becoming major subsidizers of group legal plans because they are often the underwriters of these plans. As a result, insurance

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GEO. J. LEGAL ETHICS 455 (1995) (discussing the ethical concerns regarding “telephone law”).

104. See Bell, supra note 27. Ed Gleason, president of the El Paso County Bar Association, effectively downplayed the cost savings functions of group legal plans when he stated that “[m]ost attorneys are willing to make some sort of fee arrangements to try and be responsive to customer needs.” Id.

105. See Gansaulay, supra note 6, at 43-44 (noting that insurance providers such as MetLife, Primerica, Travelers Group and CNA have all either purchased or associated themselves with legal plan providers).

106. See Moore & Kolasa, supra note 100, at 513.

107. See E-mail from Marcia L. Messett, Director of Group Sales, Hyatt Legal Plans, Inc., to Eitan Misulovin (Oct. 21, 1999) (on file with the Hofstra Labor & Employment Law Journal).

108. See Schwartz, supra note 71, at 48.

109. See Gerlin, supra note 6 (discussing the fact that the profit margins on group legal services are estimated to be around fifteen percent, a number that is nearly four times greater than that for health plans).

110. See Schwartz, supra note 71, at 48 (describing effective marketing as a “prodigious and expensive task, and involves a significant component of consumer education”).

111. See id. at 48. However, in some group legal plans, the lawyers provide direct service to the plan, and as a result the lawyers themselves may become the underwriters. Other plans offer legal services arranged with the attorneys for a fixed-fee per capita basis. Estimations of the number of people who will use the plan and types of services that will be required are used to calculate what the lawyer’s fees will be. Should the plan administrators or attorneys miscalculate these estimates, “the fee arrangement and/or the amount of work the firm is expected to do may have to be
companies bear the risks of the plan and guarantee the payment of the legal fees to the lawyers.\textsuperscript{112}

The entrance of these new legal service providers into the legal community poses an unexpected concern because of the effects that they may have on the entire legal field. As people will be more likely to turn to the attorneys authorized in their provider’s network there may no longer be a niche for local legal practitioners. After all, since many minor services may be provided on a pre-paid basis, the local legal practitioners and other attorneys not part of an existing practice may be forced to join these networks in order to attract and maintain clients.\textsuperscript{113}

This concern is most apparent in communities that are situated near large companies that provide group legal benefits to much of the locally employed populace. This may force attorneys to change the way they have chosen to practice their profession.

V. THE ETHICAL CONSIDERATIONS OF GROUP LEGAL REPRESENTATION

The shift of the legal profession towards corporate involvement in legal representation creates a risk of increased intervention by the judiciary in regulating a lawyer’s conduct.\textsuperscript{114} Currently, third party involvement in the representation of consumers is not as prevalent in the legal field as it is in the medical field.\textsuperscript{115} However, the expansion of group legal service plans in the legal marketplace may lead to greater restrictions and regulations upon the legal profession as a whole.\textsuperscript{116}

Historically, state legal regulatory authorities were wary of the potential threat that group legal service plans represented to the status quo, choosing to prohibit lawyers in their jurisdictions from functioning

\begin{itemize}
\item \textsuperscript{112} See id.
\item \textsuperscript{113} See Walker, supra note 86, at 44 (stating that employee-paid legal plans cover simple specified services, such as uncomplicated divorces, landlord-tenant cases, and consumer matters).
\item \textsuperscript{114} See McKay, supra note 94, at 366.
\item \textsuperscript{115} See Hall, supra note 32, at 117.
\item \textsuperscript{116} See McKay, supra note 94, at 366.
\end{itemize}
within such plans. However, the United States Supreme Court ultimately overturned many of these determinations, finding them to be excessively detrimental to an individual's right to obtain access to reasonable legal services.

Recently, parties in Maine, Kentucky and North Carolina

117. See, e.g., People ex rel. Lawyers' Inst. of San Diego v. Merchants' Protective Corp., 209 P. 363, 367 (Cal. 1922) (holding that a corporation may not lawfully invade the ordinary practice of the legal profession); People ex rel. L.A. Bar Ass'n v. Cal. Protective Corp., 244 P. 1089, 1092 (Cal. Dist. Ct. App. 1926) (stating that a corporation providing legal services to its patrons for a fee constitutes the unauthorized practice of law); People ex rel. Chi. Bar Ass'n v. Chi. Motor Club, 199 N.E. 1, 2 (Ill. 1935) (approving an amendment to an ethical canon that withdrew the bar association's initial approval of the Chicago Motor Club's legal service activities); People ex rel. Chi. Bar Ass'n v. Motorists' Ass'n of Ill., 188 N.E. 827, 829 (Ill. 1933) (holding that the defendant's legal service activities constituted practicing law without a license); Seawell v. Carolina Motor Club, Inc., 184 S.E. 540, 544 (N.C. 1936) (relying on the prohibition against corporate practice of law); R.I. Bar Ass'n v. Auto. Serv. Ass'n, 179 A. 139, 146 (R.I. 1935) (finding a violation of the unauthorized practice of the law); State ex rel. Lundin v. Merchants' Protective Corp., 177 P. 694, 696 (Wash. 1919) (holding that a commercial association violated the prohibition against corporate legal practice by contracting with lawyers); In re Gill, 176 P. 11 (Wash. 1918) (debating the disbarment of lawyers who contracted with a corporation engaged in the solicitation of law business). But see In re Thibodeau, 3 N.E.2d 749, 751 (Mass. 1936) (approving a similar occasion when an organization arranged for a subscriber's representing counsel because the association had no attorney control).

118. See, e.g., United Mine Workers, Dist. 12 v. Ill. State Bar Ass'n, 398 U.S. 217, 221-22 (1967) (holding that the First Amendment protects the right of a union to hire attorneys to help members with workmen compensation claims); Bhd. of R.R. Trainmen v. Virginia ex rel. Va. State Bar Ass'n, 377 U.S. 1, 8 (1964) (holding that the First Amendment protects the right of workers to receive union recommendations regarding attorney representation); NAACP v. Button, 371 U.S. 415, 444 (1963) (holding that a state's regulation of an organization that assists in providing legal representation for racial discrimination cases violates the First Amendment). See generally Norman J. Riedmueller, Group Legal Services and the Organized Bar, 10 COLUM. J.L. & SOC. PROBS. 228 (1974) (discussing the influence of the organized bar on judicial acceptance of legal service plans and subsequent actions by the U.S. Supreme Court).

119. See Prof'l Ethics Comm. of the Board of Overseers of the Bar, Formal Op. 147 (1994), in 10 ME. B.J. 98 (1995) (determining the point at which quality and cost cutting devices, used to assure a certain standard of care in providing group legal service members with standardized legal documents, violate state ethics rules barring third party intervention upon the professional judgment of attorneys associated with the plan).

120. See Ky. Bar Ass'n, Advisory Ethics Op. KBA E-368 (1994), in 58 KY. BENCH & BAR 52 (Fall 1994) (examining the issue of whether attorneys in that state may enter into exclusive contracts with liability insurers for a flat fee without the potential results of such a fee arrangement afflicting the manner in which the attorney renders his services to his clients). The Kentucky Bar determined that, due to the potential that a lawyer under such an agreement might cut corners and reduce costs in an attempt to gain greater profits, such a fee arrangement was a violation of state ethics rules. See id. The Kentucky Supreme Court ultimately affirmed this determination. See Am. Ins. Ass'n v. Ky. Bar Ass'n, 917 S.W.2d 568, 574 (Ky. 1996).

have presented their state bar associations with questions regarding the relationship between third party payors and the law firms that are involved in legal representation services with them. In examining these questions, both courts and state bar associations have prohibited certain cost-controlling and quality assurance methods that have been proposed for reasons of potential ethical conflicts of interest and appearances of impropriety.

A. Under the Model Code of Professional Responsibility

Originally, there were ethical restrictions prohibiting for-profit organizations from providing legal services. These limitations effectively shut down all for-profit group legal plans run by insurance companies and other corporations. In response to the growing trend of acceptance for these legal programs by the courts, exceptions were created in the organized bars and the model codes. The ABA Model Code of Professional Responsibility ("Code") states that it prohibits group legal services unless the organization that operates and administers the plan has it arranged so that "no profit is derived by it from the rendition of legal services by lawyers." However, there is an exception. The Code currently permits such for-profit organizations to exist, but only if "the legal services are not rendered by lawyers employed, directed, supervised or selected by it except in connection with matters where such organization bears ultimate liability of its member or beneficiary.

Despite this exception, the Code has been interpreted as being prohibitive of closed-panel legal service plans, where the plan member

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they were both separately named defendant's). Due to the direct control the insurance corporation could hold upon the lawyer and the dilution of the ethical responsibility that the lawyer must hold for his true client, the insured customer, such an arrangement was ethically prohibited. See id. But see Ca. State Bar Standing Comm. on Prof'l Responsibility and Conduct, Formal Op. 1987-91 (1987), available at http://www.calbar.org/2pub/3eth/ca87-91.htm (last visited on Nov. 19, 2000) (on file with the Hofstra Labor & Employment Law Journal) (outlining a California State Bar opinion allowing the in-house counsel for insurance companies to represent both the company and the insured customers as long as certain requirements are met and no conflicts of interest arise).


123. See Am. Ins. Ass'n, 917 S.W.2d at 569.

124. See Costich, supra note 42, at 634-36.

125. See supra notes 118, 121 and accompanying text.


127. Id.
gains no reimbursement or discount benefit if they engage a lawyer from outside of the network.\textsuperscript{128} Under the Code, even if the plan administrator earns no profit from the plan, there are restrictions that prohibit any plan that has the main objective of providing a benefit to an attorney.\textsuperscript{129} Closed plans may be interpreted as providing financial benefits by forcing plan members to turn to certain specific attorneys for legal representation.

While the Code seems to hamper the creation of group legal service organizations, fewer than fifteen states today have retained the Code.\textsuperscript{130} Furthermore, a number of those states are currently considering adoption of the Model Rules of Professional Conduct to replace the Code as their ethical touchstone.\textsuperscript{131} States that do retain the Code may restrict certain types of group legal plans as long as that prohibition is in accord with Supreme Court guidelines on the regulations of group legal services.\textsuperscript{132}

\textbf{B. Under the Model Rules of Professional Conduct}

Since 1983, the majority of U.S. states have altered their ethical rules to reflect those presented in the Model Rules of Professional Conduct ("Model Rules"),\textsuperscript{133} making it the ethical standard by which group legal services will primarily be scrutinized. Under the Model Rules, group legal services are not prohibited, though certain ethical requirements must be adhered to in order to protect the rights of the member of the plan obtaining group legal services.\textsuperscript{134}

For instance, Model Rule 1.6 mandates the maintenance of client confidentiality by the lawyer, absent a waiver.\textsuperscript{135} In some situations, even reporting a client's name and informing the legal service provider that the lawyer has been retained may be considered a disclosure of

\begin{thebibliography}{99}
\bibitem{128} See Costich, supra note 42, at 634-36.
\bibitem{129} See \textit{MODEL CODE OF PROF'L RESPONSIBILITY} DR 2-103(D)(4)(b) (1983) ("Neither the lawyer, nor his partner, nor associate, nor any other lawyer affiliated with him or his firm, nor any non-lawyer, shall have initiated or promoted such organization for the primary purpose of providing financial or other benefit to such lawyer, partner, associate or affiliated lawyer.") (emphasis added).
\bibitem{130} See \textit{STEPHEN GILLERS & ROY D. SIMON, REGULATION OF LAWYERS: STATUTES AND STANDARDS} 447 (1999).
\bibitem{131} See GILLERS & SIMON, supra note 130, at 447 ("Since 1983 . . . more than 35 states have revised their ethical rules to conform, in some degree, to the Model Rules of Professional Conduct.").
\bibitem{132} See Costich, supra note 42, at 636 n.67.
\bibitem{133} See supra note 131 and accompanying text.
\bibitem{134} See Costich, supra note 42, at 636.
\bibitem{135} See \textit{MODEL RULES OF PROF'L CONDUCT} R. 1.6 (1983).
\end{thebibliography}
confidential information. Confidentiality may require the use of an independent consulting firm as a middleman, along with comprehensive computer programs, to hide the connection between a lawyer, the client, and the subject matter for which the client requires counsel. In fact, some plans may even allow a lawyer to list their client as a ‘John Doe’ for the purposes of reporting that the plan has been used by a member who desires absolute anonymity.

Model Rule 1.8(f) requires that, regardless of a client’s consent, third parties must refrain from “interference with the lawyer’s independence of professional judgment or with the client-lawyer relationship.” Moreover, inquiring about “information relating to representation of a client is protected as required by [Model] Rule 1.6.” Under these circumstances, the Maine State Bar Association inquired whether a group legal service provider may mandate that participating lawyers apply and review standardized legal documents (such as wills) in order to assure its plan members of receiving a certain standard of care from the plan attorney. In that case, the contract at issue authorized plan attorneys to modify the standardized documents only if necessary to comply with state law. The contract also required that the lawyer not “induce any client to take an action contrary to the terms of the participating attorney agreement or . . . suggest to a client that documents prepared by [the provider] are lacking or inferior in any

136. See Samuel J. Levine, Legal Services Lawyers and the Influence of Third Parties on the Lawyer-Client Relationship: Some Thoughts From Scholars, Practitioners, and Courts, 67 FORDHAM L. REV. 2319, 2319-27 (1999); see also Moore & Kolasa, supra note 100, at 542 (including when the client desires to remain anonymous). But see ABA Comm. on Ethics and Prof’l Responsibility, Formal Op. 393 (1995) (“[T]he needs of the non-lawyer supervisor to collect demographic information about agency clients can be met by appropriate general inquiries to the lawyer concerning all of the lawyer’s files.”). A lawyer may “glean the relevant data from those files and disclose it to the non-lawyer supervisor in a way that does not in any way compromise the confidentiality of any particular client’s data or permit the client to be identified or the data to be traced to that client.” Id.

137. See Moore & Kolasa, supra note 100, at 542 (discussing the system by which membership evaluation surveys are sent and the method by which the confidentiality of the AARP Legal Services Network member is maintained).

138. See id. The AARP Legal Services Network allows members to merely present a network lawyer with a membership card for use of the service plan. In the case of telephone consultations, presentation of a membership numbers is all that is required. See id.


141. See Prof’l Ethics Comm. of the Board of Overseers of the Bar, Formal Op. 147 (1994), in 10 ME. B.J. 98 (1995); see also Hall, supra note 32, at 133 (discussing the decision).

The Maine State Bar held that the contract by the group legal provider requiring such measures of its participating attorneys violated state bar ethics rules governing the intrusion of third parties upon the personal judgment of a lawyer in the representation of their client and that Maine attorneys were prohibited from entering into such contracts.\textsuperscript{144}

Another ethical concern for lawyers in a group legal plan is the conflict of interest that may arise when a plan represents two or more members who are in a legal dispute with each other. However, in these circumstances, arrangements can be made for the independent legal representation of one of the members, thus eliminating the risk of a conflict of interest.\textsuperscript{145} Such arrangements are also required in situations where conflicts of interest arise between plan members and non-plan members.\textsuperscript{146} The majority of group legal plans also exclude from their coverage "matters or disputes arising between members of the same plan... [and] [i]n some situations, such as divorce, the plan benefits inure to the named plan member, not to the member’s spouse or dependents."\textsuperscript{147}

The fee sharing prohibitions of the Code, effectively outlawing group legal plans, are also not a concern under the Model Rules. For example, Model Rule 5.4, which prohibits fee sharing with non-lawyers,\textsuperscript{148} exempts legal service plans from this restriction, even when the plan is for-profit.\textsuperscript{149} Furthermore, while Model Rule 7.2(c) prohibits an attorney from providing “anything of value to a person for recommending the lawyer’s services,” it exempts “the usual charges of

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\textsuperscript{143} Id.

\textsuperscript{144} See id.

\textsuperscript{145} See Costich, supra note 42, at 637; Ronald P. Glantz, Building Your Small Firm Practice on a Prepaid Foundation, FLA. B.J., Jan. 1994, at 48, 52.

\textsuperscript{146} See Glantz, supra note 145, at 52 (discussing a possible situation where an attorney may be forced to withdraw because of a conflict).

\textsuperscript{147} Id.

\textsuperscript{148} See MODEL RULES OF PROF’L CONDUCT R. 5.4(a) (1983) (“A lawyer or law firm shall not share legal fees with a nonlawyer...”). A literal reading of this provision would suggest a prohibition of any employment that entails payment from a group legal services plan to a lawyer (or vice versa). But see MODEL RULES OF PROF’L CONDUCT R. 6.3 (1983) (advocating that lawyers “support and participate in legal service organizations”). This indicates that Model Rule 5.4(a) should be interpreted to limit its application to payment for impermissible solicitation of clients. As a result, the Model Rules should generally be interpreted broadly so as to permit all variations of group legal services, provided they do not directly violate other ethical restrictions. See Charles W. Wolfram, MODERN LEGAL ETHICS § 16.5.5, at 916-17 (1986).

\textsuperscript{149} See ABA Comm. on Prof’l Ethics and Grievances, Formal Op. 355 (1987) (“Participation of a lawyer in a for-profit prepaid legal service plan is permissible under the Model Rules, provided the plan is in compliance with the guidelines in this opinion.”).
VI. THE EFFECTS OF PREPAID LEGAL PLANS

Prepaid legal plans will impact many aspects of society, primarily on the legal community itself.\textsuperscript{154} For instance, in addition to offering many new legal, clerical, and administrative jobs to a whole new industry,\textsuperscript{155} the plans will provide many people, primarily lower and middle class employees, with open access to the legal community.\textsuperscript{156} While it may appear that the affect on the legal community will be enormous and the affect on society will be minor, upon closer examination this may not be the case.

A. On the Legal Community

The evolution of group legal plans may eventually result in a small number of powerful providers with nationwide networks controlling the entire industry. Realistically, however, these providers will likely have little effect on the legal community as a whole, since most plans only

\textsuperscript{150} \textit{Model Rules of Prof'L Conduct R. 7.2(o)} (1983).

\textsuperscript{151} \textit{Model Rules of Prof'L Conduct R. 7.2 cmt. 6} (1983).

\textsuperscript{152} \textit{See Model Rules of Prof'L Conduct R. 7.3} (1983).

\textsuperscript{153} \textit{See Model Rules of Prof'L Conduct R. 7.3 cmt. 6} (1983) ("This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members... for the purpose of informing such entities of the availability of and details concerning the plan... "). \textit{See also Costich, supra note 42, at 638} ("The Official Comments to the Model Rules carefully distinguish the restrictions on individual solicitation of legal business from the dissemination of information about legal services plans...").

\textsuperscript{154} \textit{See Schwartz, supra note 71, at 43.}

\textsuperscript{155} \textit{See id.} (noting how attorneys have left their normal practices to become administrators, marketers, and consultants); \textit{see also} Jennifer Dahlgren, \textit{Some Lawyers Have Found That Offering a Prepaid Legal Practice Can Keep Clients Looking Ahead to Their Needs}, A.B.A. J. 76, 77 (Apr. 1994) (stating how a Florida solo practitioner increased his business to seven lawyers and eleven support personnel); Walker, \textit{supra} note 86, at 44.

\textsuperscript{156} \textit{See Moore & Kolasa, supra note 100, at 504; Wolf, supra note 5} (stating how group legal plans are a "safety net for small businesses and middle-class families").
cover limited legal issues and services.\textsuperscript{157} While group legal plans are seeking to provide representation by qualified attorneys in all general fields around the country,\textsuperscript{158} they will not be able to monopolize the industry.

There is, and always will remain, a need for the local legal practitioner. While more employees will presumably join a plan in the future,\textsuperscript{159} there will still remain those that do not. Like HMO’s, not every employer will offer the benefit to all employees.\textsuperscript{160} In addition, many people may still prefer to maintain a personal relationship with an attorney that they know and trust.\textsuperscript{161} Therefore, although there may be major changes over time as to the providers and their coverage base, there will be little changes on the legal community as a whole.

\textbf{B. On Society}

Virtually everyone needs the help or advice of an attorney at one time or another. The “collective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the First Amendment.”\textsuperscript{162} However, many Americans that do require legal help often fail to seek out the assistance.\textsuperscript{163} Several explanations for this reluctance may exist including high costs, not knowing how or where to find the right attorney, and a general apathy to confront the issue.\textsuperscript{164}

\begin{itemize}
  \item \textsuperscript{157} See Moore & Kolasa, \textit{supra} note 100, at 510; \textit{see also} Segal, \textit{supra} note 1 (stating that these plans are not geared towards customers or companies that deal in “high stakes” corporate or governmental litigation).
  \item \textsuperscript{158} See Wolf, \textit{supra} note 5 (stating that Legal Club of America expanded its group legal plan network to more than 6,000 lawyers in every state since 1998); \textit{see also} E-mail from Marcia L. Messett, Director of Group Sales, Hyatt Legal Plans, Inc., to Eitan Misulovin (Oct. 21, 1999) (on file with the Hofstra Labor & Employment Law Journal) (stating that her company is forecasted to grow at a thirty percent rate over the next 5 years).
  \item \textsuperscript{159} See E-mail from Marcia L. Messett, Director of Group Sales, Hyatt Legal Plans, Inc., to Eitan Misulovin (Oct. 21, 1999) (on file with the Hofstra Labor & Employment Law Journal) (stating that her company is forecasted to grow at a thirty percent rate over the next 5 years).
  \item \textsuperscript{160} See Canfield, \textit{supra} note 2. Though plans are expected to be offered by almost twenty percent of large corporations by the year 2000, this implies that almost eighty percent of the nation’s large corporations will choose not to carry these plans. \textit{See id.}
  \item \textsuperscript{161} See generally Click, \textit{supra} note 21, at 67 (stating how members may use attorneys outside of the network, but at a higher cost).
  \item \textsuperscript{163} See Moore & Kolasa, \textit{supra} note 100, at 503 (citing a study conducted by the American Bar Association in 1997 that found that 61% of moderate income people and 71% of low income people did not seek legal assistance when needed).
  \item \textsuperscript{164} \textit{See id.} at 505.
\end{itemize}
Group legal plans eliminate many of these obstacles and deterrents and allow equal access to the legal system to many who have been turned away in the past. Even though the plans do not offer blanket coverage for all legal needs, at the very minimum, they offer protection for many minor, and often routine services. When analyzing the simplicity and low costs of these plans, in conjunction with "the popularity of insurance in our risk-averse society," it seems clear that the public will continue to flock to group legal services in the future.

VII. HOW PLANS WILL BE ABLE MAINTAIN THEIR EARLY SUCCESS

Despite all the fears and displeasure that early critics have voiced regarding group legal benefit programs, their success is irrefutable as the number of participants continues to grow. Although some of the concerns mentioned above are legitimate, the early entrants have taken steps to control and maintain these programs' success and limit the potential harmful effects on society. By implementing additional protective measures, providers may be able to ensure an efficient and effective benefit program. Moreover, both employers and their employees may take additional measures to guarantee that the plan they choose will meet their expectations and maximize their needs.

A. The Providers

The success of any prepaid legal services program depends primarily on its plan members. Several of the top prepaid legal plan providers have implemented stringent selection, training, and supervision requirements in order to maintain member satisfaction and control the quality of services provided. Like many of its top competitors, Hyatt Legal Plans, Inc., one of the largest providers of

165. See id. at 507-10 (discussing how the AARP Legal Services network was created specifically to deal with these issues).
166. See Schwartz, supra note 71, at 49.
168. See Canfield, supra note 2; Brennan, supra note 20, at 46 (stating that group legal plans are one of employers "top choices" for those expanding their benefit programs).
169. See Schwartz, supra note 71, at 46.
170. See E-mail from Marcia L. Messett, Director of Group Sales, Hyatt Legal Plans, Inc., to Eitan Misulovin (Oct. 21, 1999) (on file with the Hofstra Labor & Employment Law Journal); see also Brennan, supra note 20, at 49 (listing a number of criteria that providers use to determine the qualifications of interested applicants).
171. See E-mail from Marcia L. Messett, Director of Group Sales, Hyatt Legal Plans, Inc., to Eitan Misulovin (Oct. 21, 1999) (on file with the Hofstra Labor & Employment Law Journal)
prepaid legal services with over 9,000 attorney members as part of its network, begins its regulation at the beginning—the selection process.  

Prior to being accepted to the provider’s network, attorneys must submit an extensive application and undergo several rounds of interviews and meetings with the provider’s representatives in order to determine their competence. To be considered as an applicant, attorneys must have at least four years of practice experience. This gives the provider a reasonable indication as to each applicant’s success and reputation. In the initial screening process, the typical provider will analyze various factors necessary to determine each applicant’s credentials.

Once accepted, the attorney is often subjected to random evaluations. Each evaluation assesses the attorney’s success record, feedback from clients, as well as occasional feedback from other attorneys. The provider is also responsible for investigating any complaints filed by the plan member. Therefore, diligent investigation of complaints and removal of offending lawyers should be enforced by the plans. Failure to adhere to such standards should be grounds for a legal cause of action by the plan members or corporate subscriber, similar to actions brought under the Employee Retirement Income Security Act. If any allegations are found to have merit, the provider may reprimand the attorney by imposing a fine, suspension, or expulsion from the network. Additionally, all member attorneys are still bound by the ethical standards set forth by federal regulations and by their

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172. See id.
173. See Moore & Kolasa, supra note 100, at 540 (discussing how an expert panel of attorneys would interview potential attorney members after ensuring that minimum qualifications have been met).
174. See E-mail from Marcia L. Messett, Director of Group Sales, Hyatt Legal Plans, Inc., to Eitan Misulovin (Oct. 21, 1999) (on file with the Hofstra Labor & Employment Law Journal) (stating that the actual average of practice experience is seventeen years).
175. See id. (explaining the Hyatt Legal Services, Inc., selection criteria for firms as being: “[g]raduation from an accredited law school ... valid state licensure ... [f]ully staffed offices with live telephone reception ... [p]ositive customer service attitude and eagerness to serve new clients ... [b]readth [and] [s]uitability of practice ... [f]amiliarity with legal service plans ... Martindale-Hubbell ratings ... [and] [m]inimum malpractice insurance of $100,000 per claim.”).
176. See, e.g., Moore & Kolasa, supra note 100, at 542.
177. See id. at 542-43.
178. See id. at 543-44.
179. See infra Part VII.C. See generally Costich, supra note 42, at 641-51 (discussing federal regulation and cases brought under ERISA).
180. See, e.g., Moore & Kolasa, supra note 100, at 543.
respective bars. Some providers also require that their attorneys undergo recertification. The repeated evaluations set forth by the provider, as well as regulations from the state and federal levels, make the fears of an attorney’s poor representation and ethical conflicts merely speculative. Additionally, all clients who are unhappy with the service provided, or the resulting outcome, may initiate an action against the member attorney for any breach of fiduciary duty. These civil actions might be conducted at no extra cost to the client since they are a service that may be covered by the plan.

There are several additional precautions that may be taken by the providers that will further protect and enhance the benefits to the employees. In the initial screening process, the providers may be able to obtain a better indication of the applicant’s character and reputation by conducting a more extensive evaluation of the attorney’s reputation. It may also be useful to track an attorney’s performance for an “evaluation period” while the application is being considered. To further preserve their professional ethics and sharpen their legal skills, member attorneys should also be required to take a periodic continuing education course after their acceptance into the network.

B. Employers and Employees

In order to maximize the benefits offered through prepaid legal plans, the employers’ benefit managers have the responsibility of choosing the right plan for their workforce. The plans offered through

181. See Costich, supra note 42, at 627. These restrictions make “[i]ndividual attorneys providing legal services . . . professionally responsible and accountable for their conduct.” In re 1115 Legal Serv. Care, 110 N.J. 344, 352 (1988).
182. See Brennan, supra note 20, at 49 (“In addition to providing the most current information on attorneys, this process reconfirms the attorneys’ commitment to client services and to providing easy access to the legal system.”).
183. See In re 1115 Legal Serv. Care, 110 N.J. at 352.
184. See Brennan, supra note 20, at 49 (stating that all attorneys are required to carry professional liability coverage of at least $100,000); see also Costich, supra note 42, at 646 (citing several cases where clients raised breach of fiduciary duty allegations in group legal plan circumstances).
185. Materials provided by the ARAG Group clearly state that civil damage claims may be a covered option under their UltimateAdvisor Plan. See ARAG GROUP, OPTIONS FOR ULTIMATE ADVISOR (1999).
186. See Moore & Kolasa, supra note 100, at 529 (stating that the AARP requires references from at least two clients and two peers).
187. See Costich, supra note 42, at 648-49. Under federal regulation: In order to avoid liability from their conduct in administering the plan, plan trustees
the various providers could be custom tailored to fit the various needs of almost all employees, thereby eliminating many of the potential problems discussed.\footnote{188}

Prior to initiating a search for an appropriate provider, the benefits manager of an employer should conduct a survey of interested employees to determine what kinds of services they would like to see included in their legal plan.\footnote{189} Many plan providers offer implementation meetings where representatives come to the employer’s premises and explain to benefits administrators the intricacies of group legal plans and discuss with the employees the myriad of options that are available to them.\footnote{190} By properly educating the employees prior to their enrollment into the program, confusion and future uncertainty may be avoided.\footnote{191} In addition, employers are generally more familiar with group plans, have more leverage than employees, and usually have sophisticated representatives who could better deal with the plan providers.\footnote{192} As a result, they should be responsible to continue to monitor the plans closely for the benefit of their employees. This obligation should include a corporation’s duty to assess the employees’ satisfaction by requiring periodic surveys and thorough investigations of all complaints in order to ensure quality.

Despite the precautions that providers may take, fear still exists that the plans will lead to increased litigation resulting from what may be perceived to be “free” legal services coupled with the relative ease for employees to file gratuitous claims. However, this fear is unwarranted. Similar to HMO’s, as the use of legal plans increase, so will the cost of the benefit to the consumer.\footnote{193} Therefore, market prices will fairly reflect the usage and subsequent cost to the beneficiaries of the plan.\footnote{194}

\footnote{188. See Schwartz, \textit{supra} note 71, at 48-49 (discussing how benefits of the plans vary widely).}
\footnote{189. See Brennan, \textit{supra} note 20, at 47.}
\footnote{190. See id.}
\footnote{191. See id.}
\footnote{192. See generally Schwartz, \textit{supra} note 71, at 46-47 (delineating the duties of plan administrators).}
\footnote{193. See id. at 49.}
\footnote{194. See generally DERNBURG & DERNBURG, \textit{supra} note 11 (explaining how prices are directly correlated to a change in demand).}
Although the cost of the attorney is covered under the plan, the subscribing employees are still responsible for the additional costs often associated with initiating a legal action such as court fees, reporting fees, and experts. The eventual rise in cost of the plans coupled with the substantial additional expenses required for certain legal actions would limit employees' frivolous complaints and concerns.

C. Governmental Regulation

In addition to the constant monitoring by providers, employers, and employees, another method for ensuring the continued quality and success of group legal service plans is the diligent application of the current laws and ethical rules. The definition of an employee welfare benefit plan under the Employee Retirement Income Security Act ("ERISA") encompasses most funds or programs that are maintained by employers or employee organizations which provide benefits for unemployment, medical services, disability, death, or prepaid legal services.

The purpose of ERISA is to "protect . . . the interests of participants in employee benefit plans and their beneficiaries . . . by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts." ERISA regulates prepaid group legal service plans provided as an employee benefit unless the group legal plan falls into one of the few exceptions of the Act.

195. See generally Glantz, supra note 145, at 53 (stating that there are times "when the legal needs of the client go beyond the scope . . . or the coverage limitations of the plan" and the attorney may still be able to provide services at a reduced fee).

196. See supra notes 71-74 and accompanying text (discussing how the coverage of plans may be limited to certain types of issues and to extend beyond these offerings will lead to increased costs to the member).


198. See 29 U.S.C. § 1002(1). The Act does not apply to plans sponsored by governmental entities or churches, or those run by U.S. employers in foreign countries for nonresident aliens. See 29 U.S.C. § 1003(b).

199. 29 U.S.C. § 1001(b).

200. See 29 C.F.R. § 2510.3-1(j) (1998). The Department of Labor regulates plans, but excludes from ERISA regulation those plans which meet the following guidelines: (1) No contributions are made by an employer or employee organization; (2) Participation [sic] the program is completely voluntary for employees or members; (3) The sole functions of the employer or employee organization with respect to the program are, without endorsing the program, to permit the insurer to publicize the program to employees or members, to collect premiums through payroll deductions or dues checkoffs and to remit them to the insurer; and (4) The employer or employee
The Taft-Hartley Act,201 ERISA’s predecessor in the progression towards unified federal regulation of legal service plans,202 laid the groundwork for ERISA’s organizational requirements for group legal service plans, mandating payment into a trust fund for the sole benefit of employees and their dependents.203

The regulatory core of ERISA imposes explicit fiduciary duties204 on a number of individuals involved with employee benefit plans, including plan administrators and other defined parties in interest.205 A fiduciary that violates the duties imposed under ERISA is subject to various liabilities,206 and while cases of violations of a breach of fiduciary duty by legal service providers are rare, they have occurred.207

organization receives no consideration in the form of cash or otherwise in connection with the program, other than reasonable compensation, excluding any profit, for administrative services actually rendered in connection with payroll deductions or dues checkoffs.

Id.


202. See Costich, supra note 42, at 641-42; see also Jay Conison, The Federal Common Law of ERISA Plan Attorneys, 41 SYRACUSE L. REV. 1049, 1086 (1990) (stating that federal preemption serves the goals of ERISA in promoting uniformity and regulating multistate corporations, even though this deprives plaintiffs of common law remedies and forces them into federal courts).

203. See 29 U.S.C. § 1002(21) (discussing plan trustees); 29 U.S.C. § 1102(14) (discussing other parties in interest); see also Whitfield v. Lindemann, 833 F.2d 1298, 1302-03 (5th Cir. 1988) (holding an attorney jointly liable with the trustee for a plan’s losses, due to a plan trustee’s reliance on the attorney’s misleading valuation of assets acquired by an ERISA plan, even without finding that the attorney held fiduciary status); McLaughlin v. Biasucci, 688 F. Supp. 965, 968 (S.D.N.Y. 1988) (allowing a trustee, as a third party complainant, to file claims of negligence and malpractice against a legal services plan attorney since the claim was closely connected to the fiduciary’s breach of duty).

204. See 29 U.S.C. § 1109(a).

[A] fiduciary . . . shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary.

Id.

205. See Benvenuto v. Schneider, 678 F. Supp. 51, 55 (E.D.N.Y. 1988) (finding that trustees of a welfare benefit plan and a colluding law firm that provided contract services were jointly and severally liable for overpayment of $292,800 plus interest and costs when the trustees had interviewed and taken bids from only one firm and had failed to monitor utilization, analyze services in light of payments, or insure appropriate use of plan assets). The law firm in that case did minimal work, used unqualified personnel, kept no time records, and “received excessive amounts of money in relationship to the services rendered and benefits received.” Id. at 54. The plan trustees...
While one of the goals of ERISA is "to foster the growth of prepaid group legal services plans by preempting the regulatory efforts of state bar associations and other state disciplinary authorities," it does not preempt all state regulation of a plan lawyers' behavior, such as ethical codes of conduct. As a result, these ethical rules must be strictly enforced by the states administering them, without fear of infringing upon the jurisdiction of ERISA and the federal courts, in order to ensure the continued propriety and high standards of both the service plans, as well as the legal profession.

VIII. CONCLUSION

Proponents and detractors of the expansion of group legal services must realize that, short of a return to the restrictive policies taken by courts and bar associations of the early twentieth century, group legal

received sanctions for their breach of fiduciary duties under sections 404(a)(1)(A)-(B) of ERISA, and the law firm members who "knew by their actions that they were receiving money in violation of ERISA and participated with the Trustees in breaching fiduciary responsibilities...[and] must be treated as participating under the common law of trusts." Id.; see also United States v. Fisher, 692 F. Supp. 495, 499 (E.D.Pa. 1988) (stating that defendant attorneys were charged with having given "illegal kickbacks to the union officials from the first day of the prepaid legal services contract"); Mirkin, Barre, Saltzstein, Gordon, Hermann & Kreisberg, P.C. v. Noto, 94 F.R.D. 184, 186 (E.D.N.Y. 1982) (noting that a group legal services law firm was found by a legislative committee to have overcharged and acted unprofessionally in providing services). The firm sued alleging that the committee had conspired to induce the firm to breach its contract, while the defendant trustees counter-claimed, alleging that certain plan trustees had conspired with the firm "to enable it to obtain lavish retainers for legal services" and "the sole provider of prepaid legal services." Id.

208. Costich, supra note 42, at 643.

209. See 120 CONG. REC. 29,949 (daily ed. Aug. 22, 1974) (statement by Sen. Javits). In the legislative history of the act, Senator Javits clearly makes this distinction by stating that ERISA does not preempt "bar association ethical rules, guidelines or disciplinary actions." Id.; see also Feinstein v. Attorney-General, 326 N.E.2d 288, 292 (N.Y. 1975) (stating that although ERISA may "pre-empt the regulation of...prepaid legal services plans...[it] does not reach the professional licensure and regulation of lawyers... who would render [these] legal services"). The New York Court of Appeals defined the state regulatory functions as the following:

- to assess the authenticity of the plan, to assure its freedom from any taint of improper professional conduct, to preserve the attorney-client relation, to require full disclosure to prevent fraud or other wrong upon the public, and, above all, to make sure that future professional conduct on behalf of [prepaid legal services plans]...remains subject to disciplinary control by the Appellate Division.


210. See Costich, supra note 42, 631-34 (discussing in detail the early court and bar association regulation and prohibition on membership of lawyers in group legal plans and the limitations on the
services are not only here to stay, but will quickly become a common employee benefit in the early twenty-first century. By offering a major percentage of its employed populace this benefit, the United States will quickly join the European Community in embracing group legal service plans.211

Currently, media coverage of these plans has been overwhelmingly positive and plan member satisfaction has been extremely well documented by the American press.212 A group legal plan member’s access to reliable and worry-free legal advice has created a new trust for and appreciation of attorneys that has been practically non-existent in the legal community over the past century.213 The availability of hotlines and assured low cost for consultation allow Americans the opportunity to discover their legal rights, rather than forgo them. These mechanisms permit plan members to envision lawyers, not as greedy, expensive sharks who are likely to make what may already be a complex problem more painful and costly, but rather as reasonable and helpful troubleshooters capable of solving problems with a few phone calls or a well placed letter.

As long as the profit margins on group legal plans entice further expansion into the market, and demand grows as more corporations see the overwhelming advantage of offering the program as part of their benefits packages, legal service plans will enhance this new positive impression of lawyers. Eventually, this will help overcome the general public antipathy towards the legal profession. This opportunity to improve the image of lawyers can only benefit the legal system by encouraging citizens, whether involved in a plan or not, to turn, without fear, to their local legal advocates for advice.

However, with this great opportunity to improve the public’s impression of lawyers also comes a greater responsibility to ensure that this growing system of legal representation does not evolve into something that will ultimately cause greater harm to the public image of the legal profession as a whole. Embracing these safeguards and

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211. See Schlaifer, supra note 21, at 52.
212. See Bell, supra note 27; Canfield, supra note 2; O’Donoghue, supra note 22. These articles describe the satisfaction of plan members and offer a generally positive impression of the plans. But see Stewart, supra note 91 (decrying the plans and insinuating that group legal services will only cause woes for its members and the public-at-large).
regulations is the best way to prevent what may be the greatest publicity coup for the legal profession in the last decade from becoming the worst publicity nightmare the legal community could possibly imagine.

*Brian Heid & Eitan Misulovin*

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