

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 797

H. P. 642

House of Representatives, February 27, 1979

Referred to the Committee on Judiciary. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Simon of Lewiston.

Cosponsors: Mrs. Sewall of Newcastle, Mr. Brenerman of Portland and Mr. Tarbell of Bangor.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

AN ACT to Permit Nonprofit Legal Service Organizations.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 24 MRSA § 2301, sub-§ 6, as repealed and replaced by PL 1971, c. 444, § 1, is amended to read:

6. Contracts and agreements. To contract with any similar corporations in other states for the joint administration of their business, ~~and~~ to enter into reciprocal arrangements for the mutual benefit of their subscribers, **and to enter into administrative agreements with nonprofit legal services corporations organized pursuant to chapter 22.**

Sec. 2. 24 MRSA c. 22 is enacted to read:

CHAPTER 22

NONPROFIT LEGAL SERVICE ORGANIZATIONS

§ 3001. Purposes

A corporation organized under Title 13-B for the purposes described in this section may be authorized by the Superintendent of Insurance, Department of Business Regulation, on the terms and conditions provided for in this chapter.

1. **Nonprofit legal service plans.** Such a corporation may establish, maintain and operate nonprofit legal service plans, whereby legal services may be provided, by attorneys who are admitted to practice law in the State and with whom such a corporation has a contract for this purpose, to those persons or groups of persons who become subscribers to these plans under a contract which entitles each subscriber to certain legal services. The attorneys contracting with such a corporation shall be governed by this chapter and by the provisions of Title 24-A as shall become applicable, as provided in this chapter.

Any reference in this chapter to contracts with attorneys shall include contracts with individual attorneys, with partnerships or associations of attorneys or with professional corporations, as defined in Title 13, section 703, whose shareholders are attorneys.

2. **Inadvertent payments.** Such a corporation may reimburse the subscriber up to the amount payable under the plan to an attorney in the event that direct payment is inadvertently made to an attorney by or on behalf of a subscriber or member.

3. **Principal or agent.** Such a corporation may act in either the capacity of principal or agent of other nonprofit legal service corporations authorized to do business in this State in order to maintain and operate such a plan.

4. **Contracts and agreements.** Such a corporation may contract with any similar corporations in other states for the joint administration of their business, enter into reciprocal arrangements for the mutual benefit of their subscribers and enter into administrative agreements with other nonprofit organizations.

5. **Services for governmental units.** Such a corporation may, with the prior approval of the Superintendent of Insurance, utilize its organization and facilities to perform services for the governments of the United States or of the State or any units or agencies of these governments or for any charitable or nonprofit organization involved in providing legal services.

6. **Governmental agencies; right to contract.** The State or any county, municipality or quasi-municipal corporation shall have the right to contract with a corporation subject to this chapter for legal services plans covering their employees or any class or group of employees.

§ 3002. Incorporation

The articles of incorporation, and any amendments to the articles, of every corporation organized under this chapter shall be submitted to the Superintendent of Insurance for approval. The superintendent's approval, if granted, shall be endorsed on the articles or amendments before they are filed with the Secretary of State.

There shall be not less than 15 directors. One-third of the directors, at all times, shall be attorneys admitted to practice law in this State who contract with the corporation for the direct provision of legal services to subscribers. One-third

shall be persons representing any nonprofit corporation which has entered into administrative agreements with the corporation as hereinafter set forth. One-third shall be consumers. For purposes of this section "consumer" means a person who does not derive more than 20% of annual income, whether directly or through that person's spouse, from the legal profession. No director shall serve more than 3 consecutive 3-year terms.

§ 3003. Contracts

A corporation organized under this chapter may enter into contracts for the rendering of legal services to the subscribers only with attorneys admitted to practice law in the State. All these attorneys shall be eligible to participate in a legal services plan established under this chapter upon entering into contracts with a corporation organized under this chapter. All contracts for the provision of legal services issued by such a corporation shall constitute direct obligations of the contracting attorneys to the corporation. Contracts issued under a legal services plan shall provide that the attorney-client relationship shall exist between the client and the attorney, that the client shall have the free choice of any contracting attorney able and willing to provide these services, all of which shall be based upon definite agreements covering these legal services. Any such contracting attorney shall be free to refuse services for appropriate professional reasons. Nothing in this section shall be construed to prohibit reciprocal arrangements for the exchange of legal services between similar nonprofit legal service plans.

§ 3004. Licenses

An application for the certificate of authority provided for in section 3005 shall be made in the form required by the Superintendent of Insurance and shall contain the information the superintendent deems necessary. The application shall be accompanied by a copy of each of the following documents:

1. Certificate. The certificate of incorporation;
2. Bylaws. The bylaws;
3. Proposed contracts. Proposed contracts between the corporation and contracting attorneys, showing the terms under which the legal services are to be furnished to subscribers;
4. Subscription rates and benefits. Contracts to be issued to subscribers showing a table of the subscription rates to be charged and the benefits to which they are entitled; and
5. Financial statement. Financial statement of the corporation, including the contributions paid or agreed to be paid to the corporation for working capital, the name of each contributor and the terms of each contribution.

§ 3005. Issuance of licenses

The Superintendent of Insurance shall issue a certificate of authority on payment of a fee, which shall be the same as for an insurer as provided in Title 24-A, section 601, if the applicant meets the following requirements.

1. Plan. It is established to provide a bona fide nonprofit legal services plan.
2. Contracts. The contracts between the applicant and the contracting attorneys obligate each participating party to render service to which each subscriber may be entitled under the terms of the contract issued to the subscriber and the contracts are otherwise reasonable.
3. Subscription rates and benefits. The subscription rates charged and benefits to be provided are as prescribed in sections 3016, 3018 and 3019.
4. Contributions. Contributions to the working funds of the applicant are repayable only out of earned premiums in excess of operating expenses, payments to contracting attorneys and adequate reserve required by the superintendent.
5. Money available. The money available for working capital shall be sufficient to cover all acquisition costs and operating expenses for a reasonable time from the date of the issuance of the certificate of authority.

§ 3006. Reports

Every corporation organized under this chapter shall annually, on or before April 1st, file in the office of the Superintendent of Insurance a statement verified by at least 2 of the principal officers of the corporation showing its condition on December 31st of the preceding year which shall be in the form and shall contain such matters as the superintendent shall prescribe.

§ 3007. Examination

The superintendent, or any deputy or examiner or any other person whom he shall appoint for the purpose, shall have the power of visitation and examination into the affairs of any corporation and shall have free access to all of the books, papers and documents that relate to the business of the corporation, may summon and qualify witnesses under oath, and examine its officers, agents or employees or other persons in relation to the affairs, transactions and conditions of the corporation.

The reasonable cost of the examination shall be borne by the corporation examined.

§ 3008. Investments

Any corporation organized under this chapter shall be restricted in its investments in the same manner as are saving banks in this State.

§ 3009. Disputes

Any dispute arising between a corporation subject to this chapter and any contracting attorney with which the corporation has a contract for legal services

may be submitted to the superintendent for his decision with respect thereto. Any decision and findings of the superintendent made under this chapter shall not be any bar to constituted legal procedure for the de novo review of the facts and the law in a court of competent jurisdiction.

§ 3010. Dissolution

Any dissolution or liquidation of a corporation subject to this chapter shall be conducted under the supervision of the superintendent, who shall have all power with respect thereto granted to him under Title 24-A with respect to the dissolution and liquidation of insurance companies.

§ 3011. Taxation

Every corporation subject to this chapter is declared to be a charitable and benevolent institution and its funds and property shall be exempt from taxation.

§ 3012. Agents

No person for himself or on behalf of any individual, firm, association or corporation shall sell or offer to sell any legal services benefit pursuant to a plan as is provided for in this chapter without having been examined and licensed therefor by the superintendent.

§ 3013. Licenses; fees

The superintendent shall grant a license as an agent, on behalf of any individual, firm, association or corporation licensed therefor, in order to sell any legal services benefit provided for in this chapter, to any applicant who shall furnish the superintendent with satisfactory evidence of his integrity, competence and authority to sell the service offered. The license, when granted, shall expire on January 1st thereafter, and annually thereafter may be renewed so long as the superintendent shall be satisfied of the licensee's integrity, competence, authority and responsibility to provide the services stipulated.

The applicant shall pay a license fee to the superintendent, which shall be the same as the fee applicable to the agent of a domestic mutual nonlife insurer as provided for in Title 24-A, section 601, subsection 5, paragraph B.

§ 3014. Revocation of authority; license

The superintendent may revoke a certificate of authority or license granted under this chapter for cause at any time after notice and hearing.

§ 3015. Penalties

Any person, firm, association or corporation, or any officer, agent, servant or employee thereof, who shall violate any of the provisions of this chapter shall be punished by the fines and penalties provided in Title 24-A.

§ 3016. Certificates or contracts; approval by superintendent

No nonprofit legal service corporation organized under this chapter shall issue or deliver in this State any certificate or other evidence of any contract unless and

until the form thereof, together with the form of application and all riders or endorsements for use in connection therewith, shall have been filed with the superintendent and approved by him as conforming to reasonable rules and regulations from time to time made by him and as not inconsistent with any other provisions of law applicable thereto. The superintendent shall, within a reasonable time after the filing of any form, notify the corporation filing for either his approval of the form or his disapproval thereof. The superintendent may approve any form which in his opinion contains provisions on any one or more of the several requirements made by him which are more favorable to the subscribers than the one or ones so required. The superintendent shall have power, from time to time, to make, alter and supersede reasonable regulations prescribing the required, optional and prohibited provisions in the contracts and the regulations shall conform as far as practicable, to Title 24-A, chapters 33 and 35.

Where the superintendent deems the foregoing chapters, either in whole or in part, inapplicable, he may prescribe that portions of the contract or a summary thereof be printed on the certificate issued to the subscriber.

Any filing made hereunder shall be deemed approved unless disapproved within 60 days from the date of the filing.

§ 3017. Other provisions applicable

The following chapters and provisions of Title 24-A, where and to the extent not inconsistent with this chapter and the reasonable implications thereof, shall apply to corporations only to the extent provided for by rules and regulations issued by the superintendent to the corporations:

1. Chapter 1. General definitions and provisions;
2. Chapter 3. The Insurance Superintendent;
3. Chapter 23. Trade practices and frauds;
4. Chapter 49. Continuity of management; and
5. Chapter 57. Delinquent insurers.

§ 3018. Rate filings on individual subscriber and membership contracts

1. **Filing of rate information.** Every nonprofit legal service organization shall file with the superintendent, except for group subscriber and membership contracts, every rate, rating formula and every modification of any of the foregoing which it proposes to use. Every filing shall state the effective date thereof. Every filing shall be made not less than 30 days in advance of the stated effective date unless the 30-day requirement is waived by the superintendent and the effective date may be suspended by the superintendent for a period of time not to exceed 30 days.

2. **Filing Information; public information.** When a filing is not accompanied by the information upon which the organization supports the filing, and the

superintendent does not have sufficient information to determine whether the filing meets the requirements that the rates shall not be excessive, inadequate or unfairly discriminatory, he shall require the organization to furnish the information upon which it supports the filing. A filing and any supporting information shall be open to public inspection after the filing becomes effective. For the purpose of determining whether the filing produces rates that are not excessive, inadequate or unfairly discriminatory, the superintendent may employ a competent actuary and the reasonable costs of the actuary shall be borne by the organization making the filing.

§ 3019. Disapproval of filing

If, at any time, the superintendent has reason to believe that a filing does not meet the requirements that rates shall not be excessive, inadequate or unfairly discriminatory, and violates any of Title 24-A, chapter 23, to the extent it is applicable pursuant to section 3017, he shall after a hearing held upon not less than 10 days written notice to the organization making the filing specifying the matters to be considered at the hearing, issue an order specifying in what respect, if any, he finds that the filing fails to meet the requirements that rates shall not be excessive, inadequate or unfairly discriminatory and stating when, within a reasonable period thereafter, the filing shall be deemed no longer effective. The superintendent shall have the burden of proof at any hearing concerning a determination that the rates are excessive, inadequate or unfairly discriminatory. Copies of the order shall be sent to the organization making the filing. The order shall not affect any individual subscriber or membership contract made or issued prior to the expiration of the effective period set forth in the order.

§ 3020. Appeals from order or decision of the superintendent

Any organization aggrieved by order or decision of the superintendent may appeal therefrom as provided in Title 24-A, section 236.

§ 3021. Other plans allowed

The provisions of this chapter shall not be construed to prohibit any prepaid legal insurance plans permitted under Title 24-A and approved by the Superintendent of Insurance.

STATEMENT OF FACT

The purpose of this bill is to authorize the establishment of a nonprofit legal services corporation, similar to the present nonprofit hospital and medical service corporations such as Associated Hospital Service (Blue Cross-Blue Shield). The corporation would enter into 3-way agreements with attorneys and with subscribers who would primarily be groups. The attorneys would contract to provide legal services, according to certain terms, to subscribers, who would pay rates to the corporation. The corporation would reimburse the attorneys for the legal services provided.