

The Impact of Group and Prepaid Legal Services: Plans to Meet the Needs of Middle Income People

This article attempts to assess the impact that group and prepaid legal services have on providing meaningful access to legal services for middle income Americans. It also describes the barriers to using these services and how these barriers might be overcome.

Overview

A few definitions are in order first. **Group legal services plans** generally offer discounts on legal services and free consultations to members of groups that sponsor these plans. These members usually don't pay a fee for access to these legal services, other than the membership fee to belong to the group. The discount is based on the participating attorney's usual fee. Thus the hourly rate paid by the member will vary depending on the particular attorney's normal hourly rate. The groups that sponsor these plans include unions, membership organizations like AARP, and civic organizations. There is a segment of these group plans that is worth noting but is difficult to document. This involves entrepreneurial efforts by individual lawyers or small firms to work with local groups. The group can be a Lions Club, church, coop, an AARP chapter, or just about any local association of people. The lawyer usually provides members with free consultations and discounts on other services.

Prepaid legal services plans are generally sold by companies that don't directly deliver legal services, but contract with attorneys in private practice to provide these services. The major exceptions are the larger union plans which primarily use staff attorneys to provide services to union members who have collectively bargained with their employers to obtain these benefits. Most prepaid plans are: (1) funded by employers as an employee benefit, usually as a result of collective bargaining with a union; (2) sold directly to employees through their employers at special rates, or (3) sold directly to the public. A special category of prepaid plans are those offered as part of an **employee assistance plan** provided by many employers to their employees to address crises that occur in the employees' lives. These employee assistance services are usually limited to a legal consultation and referrals, if more extensive legal services are required.

Two final categories that are not covered by this article are legal services provided by Judge Advocate Generals (JAGs) to members of the armed forces and certain reservists and legal services provided to college students.

Ability of These Plans to Provide Access to Legal Services

Group Plans. The group plans are largely responsible for the claim that group and prepaid legal services plans covered nearly 122 million Americans in 2002¹. The 122 million figure excludes duplicate coverage. If duplicates are counted, the figure increases

¹ 2002 Legal Services Plan Census, National Resource Center for Consumers of Legal Services, 2002, pg 1, www.nrcls.org

to 154 million people.² Group plans account for about 56% (68 million) of these 122 million people (87 million if duplicates are counted)³. Ninety-one percent of those covered by these group plans participate in one of four plans. The largest is the Union Plus Legal Services Plan which is sponsored by The AFL-CIO and most of its member unions (45%). The next largest is the AARP plan which was founded by the author and his colleagues (20%). This is followed by the elder hotlines, also founded by the author and his colleagues (20%). The last plan is that sponsored by the National Education Association (NEA) (6%)⁴.

The AARP group plan is available to about 17 million of its 35 million members⁵.

Members don't pay for this access other than the \$12.50 per year membership dues for belonging to AARP. Members receive up to a half hour free consultation, low-cost simple wills and powers of attorney, and a 20% discount on all other services provided by its participating attorneys⁶. The discount is based on the participating attorney's normal rates. About 1100 attorneys participate.

The AFL-CIO offers a similar plan to its estimated 40 million members and their families⁷. They receive a free consultation and 30% off normal fees. Finally the 5 million National Education Association members and their families have access to a plan which is similar to the AFL-CIO plan⁸. These plans offer good value as a result of the free consultation and reduced rates, but also because members have some recourse through the membership organization if the member is dissatisfied with the services received or their cost. For example AARP has staff devoted to resolving complaints and attorneys receiving too many complaints are dropped from its plan.

The elder hotlines are very different from the preceding plans. These hotlines are operated by independent agencies in each state and are funded through government and foundation grants and other charitable sources. These hotlines use paid attorneys who provide free telephone legal advice and referrals to people age 60 and older. (The Pennsylvania hotline serves those 50 and older). The legal advice they provide is usually more detailed and comprehensive than the advice provided by means of free consultations in the other group plans. The goal of hotline attorneys is to resolve as many matters as possible. The purpose of the free consultations in other plans is to answer straight-forward legal questions and resolve simple matters; more complex matters are usually scheduled for a face-to-face meeting where a fee is charged. Some hotlines are free-standing, but most are a part of a legal aid program or bar association. There are hotlines in 23 states, the District of Columbia and Puerto Rico. These hotlines are not strictly legal plans as users don't have to be members of a group; the services are available to the general public.

² Id. at pg 2.

³ Id. at pg 7.

⁴ Id. at pg 7.

⁵ Id. at pg 7.

⁶ See www.aarp.org/lbn

⁷ See www.unionplus.org/benefits/legal See also 2002 Legal Services Plan Census, supra, at pg 7.

⁸ See 2002 Legal Services Plan Census, supra, at pg 7.

Unfortunately these group plans don't have the impact suggested by their huge numbers. It is very difficult for the membership organizations to determine how many members use the plans annually, as the attorneys often fail to keep track of telephone consultations that don't lead to fee paying cases. Also attorneys' compliance with the Associations' reporting requirements can be spotty.

Making their members aware of the legal plan is the biggest challenge faced by membership groups. The NEA and AFL-CIO don't have direct contact with all their members, but rely on their local unions or state offices to get the word out and this is uneven. AARP does have direct contact with all its members but devoting ad space in its publications to its legal plan results in a significant loss of advertising revenue it could receive if it sold that ad space to others. Thus AARP literally can not afford to heavily market its plan in the publications it sends to its members. I estimate that only 18,700 to 56,100 households use AARP's plan annually⁹. The usage rate of the AFL-CIO and NEA plans is likely to be lower due to their lack of regular contact with all their members.

The elder hotlines served nearly 51,000 households in 2002, far less than the estimated 17 million people age 60+ who have access to them¹⁰. While this number could increase if some of the hotlines improved their efficiency, the hotlines are otherwise operating at full capacity. Since these hotlines provide free services, more funding from government or charitable sources would be required to significantly increase the number of people served.

Entrepreneurial group plans: There is no way of knowing how many of these plans exist or the number of people who are covered. In some ways, this has better potential for growth than many of the other group plans. The major barrier here is the ability of these practitioners to manage high volume practices. Practitioners who market these plans must learn to handle the high volume of free consultations that are generated and use state-of-the-art case management systems. They must also have efficient systems (e.g., document generators) for handling the highly discounted legal services such as drafting simple wills.

Employer paid plans: A large segment of the prepaid industry consists of plans funded by employers, usually as a result of collective bargaining. The range of legal problems covered by these plans can vary considerably from most of the common legal problems not requiring extensive trial work to advice, brief services, simple wills and discounts. About 3 million workers and their families are covered by such plans (7.2 million in all).¹¹ It is also estimated that only 10% to 30% of employees' households use the services each year¹². Employers must promote the plans in order to achieve the

⁹ In an April 1, 2000 survey of its lawyers, AARP asked them to estimate the number of new clients served. On average, the answer was 17, but the question was vague about the period of time involved.

¹⁰ Annual Report of AARP Legal Hotline Technical Assistance Project Accomplishments, 2002

¹¹ Letter from American Prepaid Institute to Joint Committee on Taxation, House of Representatives, August 14, 2001; also compare 2002 Legal Services Plan Census, supra, at pg 5 with the 2000 Legal Services Plan Census, National Resource Center for Consumers of Legal Services, 2000, pg 9.

¹² Conversation with Alec Schwartz, Director of the American Prepaid Institute, April 2003.

utilization rates they want to justify their costs without creating excessive demand. The number of people covered by these plans has been static for the past 10 years and has actually declined in the past two years.¹³

One factor causing this lack of growth has been the sunseting of Section 120 of the Internal Revenue Code which provided that the value of the plan to the employee was not treated as taxable income. As a result, working and retired employees who are covered by these plans must report the value of the plans as taxable income whether or not they use them, which create concern and confusion. Another reason for the lack of growth is the national trend of employers to reduce their costs for employee benefits.

EAP plans: Employees facing a legal problem can receive free advice, referrals, and, in some cases, discounts through employee assistance plans. Typically this advice is provided by phone. Employers fund EAP programs to address a wide range of problems that might affect an employee's work performance. This is an area of modest growth. The number of employees covered by these plans has increased about 2.5% in the past two years.¹⁴ However, usage rate is relatively low. Depending on company and EAP promotional efforts, usage will vary between 1% and 5%; 1% to 2% is the most common.¹⁵

Other employment based plans: One segment of the prepaid industry that is experiencing some growth is employee funded plans. These are plans that are offered at special rates through the employees' union or employer. They are paid by means of union dues or payroll deductions. The range of services covered by these plans can vary considerably. About 5 million employees and their families are covered by these plans and this number grew by 11% between 2000 and 2002¹⁶. ARAG reports that, on average, the usage rate of its Ultimate Advisor Plan is 70%¹⁷. Usage is higher because these plans are purchased directly and usually by employees with existing legal problems.

Plans sold directly to consumers: This is another area of growth. This market is dominated by two companies that account for 3.3 million of the 4.1 million people covered by these plans: Pre-paid Legal Services Inc (2.2 million) and Legal Services Plan of America, operated by General Electric Services, Inc (1.1 million)¹⁸. These plans cover legal advice, legal document review, simple wills, discounts, and a few other services. The number of policies administered by the Legal Services Plan of America has remained flat over the past two years. Nearly all the growth in this sector has come from Pre-paid Legal Services, Inc. (Pre-paid) whose enrollment grew from 1.6 million to 2.2 million between 2000 and 2002 (38%)¹⁹. However the growth of Pre-paid's sales may be

¹³ Compare 2002 Legal Services Plan Census, supra, at pg 5 with 2000 Legal Services Plan Census, supra, at pg 9.

¹⁴ Compare 2002 Legal Services Census, supra, at 6, with 2000 Legal Services Census, supra, at 10.

¹⁵ A 5/20/2003 e-mail from Sandy DeMent, former head of Law Phone/ACS, a major provider of EAP legal services.

¹⁶ Compare 2002 Legal Services Census, supra, at 5, with 2000 Legal Services Census, supra, at 9.

¹⁷ 2002 statistics provided by David Baker of ARAG.

¹⁸ 2002 Legal Services Plan Census, supra, at pg 6.

¹⁹ Compare Id. at pg 6 with 2000 Legal Services Plan Census, supra, at pg 10.

a result of “over selling” its product. Pre-paid’s uses a multi-level marketing scheme. It has over 286,000 independent agents who receive revenues by selling the plans to consumers and recruiting other agents.²⁰ 87% of these agents have purchased Pre-paid’s Plan.²¹ Pre-paid has faced a number of lawsuits from both its agents and customers. The agents claim that prepaid failed to point out that only 29% of their customers keep their policies going for three years or more.²² Agents’ income is derived, in part, from renewals. Consumers allege that the agents made false representations about the product. They say they were told the plan covered all legal matters including some trial work. What they are not always told is that the “coverage” for most legal problems only involves a discount on participating attorneys’ normal rates, a benefit members get for free from AARP, NEA and AFL-CIO. While the plan does cover trial time, it does not cover most of the time leading up to the trial which is often prohibitively expensive.

ARAG’s Ultimate Adviser Legal Plan is comparable to Pre-paid Inc’s. plan in the sense that both are sold directly to the user of the plan. ARAG arranges with employers to sell its plans directly to employees, the users of plan, as an employee benefit. Pre-paid sells its plans directly to users through its independent sales agents. 90% of the purchasers of ARAG’s Ultimate Adviser Legal Plan retain the plan for a second year.²³ But, only 58% of the purchasers of Pre-paid’s plan retain the plan for a second year.²⁴ “...Pre-paid’s customers drop their coverage for three primary reasons – they pay for it and don’t use it; they buy it with plans to get rich selling it and then drop it when they fail; or they try to use it and discover its limitations.”²⁵ The fact that Pre-paid Inc. experiences over four times the drop-out rate that ARAG does after the first year is additional evidence of the “over-selling” problem. It is possible that Pre-paid’s growth may end when its sales practices are better known.

²⁰ Elizabeth MacDonald, Legal Trouble: Pre-Paid Legal Services Insures Against Lawsuit Costs. It Could Use Some Insurance Itself; Forbes Magazine, 08 July 2002; 50 Volume 170; Issue 01

²¹ Id.

²² Id.

²³ See footnote 17 supra

²⁴ Melissa Davis, Suit Targets Exclusions in Oklahoma-Based Pre-paid Legal Services Contracts, The Daily Oklahoman, 12 April 2002.

²⁵ Id.