

Introduced by Senator WienerJanuary 19, 2022

An act to amend Sections 1386 and 1387 of, and to add Section 1388.5 to, the Health and Safety Code, relating to health care service plans.

LEGISLATIVE COUNSEL'S DIGEST

SB 858, as introduced, Wiener. Health care service plans: discipline: civil penalties.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care. Existing law authorizes the Director of the Department of Managed Health Care to take disciplinary measures, including the imposition of civil penalties, against a licensee when the director determines that the licensee has committed an act or omission constituting grounds for disciplinary action, as specified. Under existing law, a person who violates the act, or a rule or order adopted or issued under the act, is generally liable for a civil penalty not to exceed \$2,500 per violation. Existing law also includes various provisions that assess specific civil and administrative penalties for certain violations. Fines and penalties under the act are deposited into the Managed Care Administrative Fines and Penalties Fund, and used, upon appropriation by the Legislature, for designated purposes.

This bill would increase the maximum base amount of the civil penalty from \$2,500 per violation to \$25,000 per violation, which would be adjusted annually commencing January 1, 2024, as specified. The bill would multiply the amounts of other specified civil and administrative penalties by 4, commencing January 1, 2023, and would also annually adjust those penalties, commencing January 1, 2024. The bill would

authorize the director to impose a corrective action plan to require future compliance with the act, under certain circumstances. If a health care service plan fails to comply with the corrective action plan in a timely manner, the bill would require the department to monitor the health care service plan through medical surveys, financial examinations, or other means necessary to ensure timely compliance.

The bill would require the director, when assessing administrative penalties against a health care service plan, to determine the appropriate amount of the penalty for each violation, based upon consideration of specified factors, such as the nature, scope, and gravity of the violation, whether the violation is an isolated incident, and the amount of the penalty necessary to deter similar violations in the future. The bill would require the director to provide a written explanation of the amount of the penalty, including the factors the director relied upon in assessing that amount.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (1) Some of the penalty amounts the Department of Managed
4 Health Care is authorized to impose have not been altered since
5 the enactment of the Knox-Keene Act in 1975. In 1975, the price
6 of gasoline was \$0.59 a gallon and a pound of chicken also cost
7 \$0.59.

8 (2) Other provisions of the Knox-Keene Act that include penalty
9 amounts have not been updated since 1999 or 2000. Since then,
10 health plan premiums in California for employer-sponsored
11 coverage have quadrupled from one hundred sixty three dollars
12 (\$163) per month in 2000 to six hundred sixty-one dollars (\$661)
13 per month in 2020, according to the California Employer Health
14 Benefits Survey published by the California Health Care
15 Foundation in August 2021.

16 (3) It is, therefore, the intent of the Legislature in enacting this
17 act to provide the Department of Managed Health Care with
18 additional authority to levy penalties and impose corrective action
19 plans, while updating penalty amounts and ensuring that in the
20 future, penalty amounts increase as health plan premiums increase.

1 SEC. 2. Section 1386 of the Health and Safety Code is amended
2 to read:

3 1386. (a) The director may, after appropriate notice and
4 opportunity for a hearing, by order suspend or revoke any license
5 issued under this chapter to a health care service plan or assess
6 administrative penalties if the director determines that the licensee
7 has committed any of the acts or omissions constituting grounds
8 for disciplinary action.

9 (b) The following acts or omissions constitute grounds for
10 disciplinary action by the director:

11 (1) The plan is operating at variance with the basic
12 organizational documents as filed pursuant to Section 1351 or
13 1352, or with its published plan, or in any manner contrary to that
14 described in, and reasonably inferred from, the plan as contained
15 in its application for licensure and annual report, or any
16 modification thereof, unless amendments allowing the variation
17 have been submitted to, and approved by, the director.

18 (2) The plan has issued, or permits others to use, evidence of
19 coverage or uses a schedule of charges for health care services that
20 do not comply with those published in the latest evidence of
21 coverage found unobjectionable by the director.

22 (3) The plan does not provide basic health care services to its
23 enrollees and subscribers as set forth in the evidence of coverage.
24 This subdivision shall not apply to specialized health care service
25 plan contracts.

26 (4) The plan is no longer able to meet the standards set forth in
27 Article 5 (commencing with Section 1367).

28 (5) The continued operation of the plan will constitute a
29 substantial risk to its subscribers and enrollees.

30 (6) The plan has violated or attempted to violate, or conspired
31 to violate, directly or indirectly, or assisted in or abetted a violation
32 or conspiracy to violate any provision of this chapter, any rule or
33 regulation adopted by the director pursuant to this chapter, or any
34 order issued by the director pursuant to this chapter.

35 (7) The plan has engaged in any conduct that constitutes fraud
36 or dishonest dealing or unfair competition, as defined by Section
37 17200 of the Business and Professions Code.

38 (8) The plan has permitted, or aided or abetted any violation by
39 an employee or contractor who is a holder of any certificate,
40 license, permit, registration, or exemption issued pursuant to the

1 Business and Professions Code or this code that would constitute
2 grounds for discipline against the certificate, license, permit,
3 registration, or exemption.

4 (9) The plan has aided or abetted or permitted the commission
5 of any illegal act.

6 (10) The engagement of a person as an officer, director,
7 employee, associate, or provider of the plan contrary to the
8 provisions of an order issued by the director pursuant to subdivision
9 ~~(e)~~ (e) of this section or subdivision (d) of Section 1388.

10 (11) The engagement of a person as a solicitor or supervisor of
11 solicitation contrary to the provisions of an order issued by the
12 director pursuant to Section 1388.

13 (12) The plan, its management company, or any other affiliate
14 of the plan, or any controlling person, officer, director, or other
15 person occupying a principal management or supervisory position
16 in the plan, management company, or affiliate, has been convicted
17 of or pleaded nolo contendere to a crime, or committed any act
18 involving dishonesty, fraud, or deceit, which crime or act is
19 substantially related to the qualifications, functions, or duties of a
20 person engaged in business in accordance with this chapter. The
21 director may revoke or deny a license hereunder irrespective of a
22 subsequent order under the provisions of Section 1203.4 of the
23 Penal Code.

24 (13) The plan violates Section 510, 2056, or 2056.1 of the
25 Business and Professions Code or Section 1375.7.

26 (14) The plan has been subject to a final disciplinary action
27 taken by this state, another state, an agency of the federal
28 government, or another country for any act or omission that would
29 constitute a violation of this chapter.

30 (15) The plan violates the Confidentiality of Medical
31 Information Act (Part 2.6 (commencing with Section 56) of
32 Division 1 of the Civil Code).

33 (16) The plan violates Section 806 of the Military and Veterans
34 Code.

35 (17) The plan violates Section 1262.8.

36 (18) The plan violates Chapter 8.5 (commencing with Section
37 127671) of Part 2 of Division 107, including the data submission
38 requirements of that chapter.

39 (c) *In addition to the authority to conduct an onsite medical*
40 *survey and prepare a corrective plan pursuant to Section 1380*

1 *and to conduct an assessment of the health care service plan's*
2 *financial health, including, but not limited to, identification of the*
3 *plan's available reserves, the director may impose a corrective*
4 *action plan pursuant to this subdivision to require future*
5 *compliance by the health care service plan with any other provision*
6 *of this chapter. Failure by the health care service plan to comply*
7 *with a corrective action plan imposed pursuant to this subdivision*
8 *in a timely manner appropriate for rectifying noncompliance shall*
9 *be monitored by the department through medical surveys, financial*
10 *examinations, or other means necessary to assure timely*
11 *compliance.*

12 *(d) (1) When assessing administrative penalties against a health*
13 *plan, the director shall determine the appropriate amount of the*
14 *penalty for each violation of this chapter based upon one or more*
15 *factors, as applicable, including, but not limited to, the following:*

16 *(A) The nature, scope, and gravity of the violation.*

17 *(B) The good or bad faith of the plan.*

18 *(C) The plan's history of violations.*

19 *(D) The willfulness of the violation.*

20 *(E) The nature and extent to which the plan cooperated with*
21 *the department's investigation.*

22 *(F) The nature and extent to which the plan aggravated or*
23 *mitigated any injury or damage caused by the violation.*

24 *(G) The nature and extent to which the plan has taken corrective*
25 *action to ensure the violation will not recur.*

26 *(H) The financial status of the plan, including reserves, financial*
27 *solvency, revenues in excess of expenditures and other factors*
28 *relating to the financial status of the domestic corporation and*
29 *any parent company, subsidiary, affiliate, or other financially*
30 *connected entity.*

31 *(I) The financial cost of the health care service that was denied,*
32 *delayed, or modified, including whether the penalty is*
33 *commensurate with or exceeds the avoided cost based on the*
34 *number of enrollees estimated to be affected and the cost of the*
35 *care denied, delayed or modified*

36 *(J) Whether the violation is an isolated incident.*

37 *(2) The amount of the penalty shall also take into account one*
38 *or more of the following:*

39 *(A) The number of enrollees estimated to be affected.*

1 (B) *The frequency of the violation based on the number of days*
2 *for a continuous violation or the estimated number of incidents*
3 *with potential harm to enrollees.*

4 (C) *The severity of the potential harm in terms of loss of life,*
5 *loss of health, or financial harm to the enrollee.*

6 (D) *The amount of the penalty necessary to deter similar*
7 *violations in the future.*

8 (3) *The director shall provide written explanation of the amount*
9 *of an administrative penalty, including the factors the director*
10 *relied upon in assessing that amount.*

11 (e)

12 (e) (1) The director may prohibit any person from serving as
13 an officer, director, employee, associate, or provider of any plan
14 or solicitor firm, or of any management company of any plan, or
15 as a solicitor, if either of the following applies:

16 (A) The prohibition is in the public interest and the person has
17 committed, caused, participated in, or had knowledge of a violation
18 of this chapter by a plan, management company, or solicitor firm.

19 (B) The person was an officer, director, employee, associate,
20 or provider of a plan or of a management company or solicitor
21 firm of any plan whose license has been suspended or revoked
22 pursuant to this section and the person had knowledge of, or
23 participated in, any of the prohibited acts for which the license
24 was suspended or revoked.

25 (2) A proceeding for the issuance of an order under this
26 subdivision may be included with a proceeding against a plan
27 under this section or may constitute a separate proceeding, subject
28 in either case to subdivision ~~(d)~~: (f).

29 ~~(d)~~

30 (f) A proceeding under this section shall be subject to appropriate
31 notice to, and the opportunity for a hearing with regard to, the
32 person affected in accordance with subdivision (a) of Section 1397.

33 SEC. 3. Section 1387 of the Health and Safety Code is amended
34 to read:

35 1387. (a) ~~Any~~ (1) A person who violates ~~any~~ a provision of
36 this chapter, or who violates ~~any~~ a rule or order adopted or issued
37 pursuant to this chapter, shall be liable for a civil penalty ~~not to~~
38 ~~exceed two thousand five hundred dollars (\$2,500)~~ *not less than*
39 *twenty-five thousand dollars (\$25,000)* for each violation, which
40 shall be assessed and recovered in a civil action brought in the

1 name of the people of the State of California by the director in any
2 court of competent jurisdiction.

3 (2) *A violation that is ongoing is subject to a civil penalty not*
4 *less than twenty-five thousand dollars (\$25,000) for each day that*
5 *the violation continues, whether continuous or not.*

6 (3) *Each enrollee harmed by a violation of this chapter*
7 *constitutes a separate and distinct violation subject to a civil*
8 *penalty not less than twenty-five thousand dollars (\$25,000).*

9 (4) *A civil penalty shall be computed by multiplying the number*
10 *of enrollees affected by the number of days that the violation*
11 *continues.*

12 (b) *Commencing January 1, 2024, and each January 1*
13 *thereafter, the amount specified in this section shall be adjusted*
14 *annually based on the average rate of change in rates for the*
15 *individual and group markets in the prior calendar year. For*
16 *purposes of this subdivision, rates include premiums and cost*
17 *sharing.*

18 ~~(b)~~

19 (c) *As applied to the civil penalties for acts in violation of this*
20 *chapter, the remedies provided by this section and by other sections*
21 *of this chapter are not exclusive, and may be sought and employed*
22 *in any combination to enforce this chapter.*

23 ~~(e) No action shall~~

24 (d) *An action shall not be maintained to enforce any liability*
25 *created under subdivision (a), unless brought before the expiration*
26 *of four years after the act or transaction constituting the violation.*

27 SEC. 4. Section 1388.5 is added to the Health and Safety Code,
28 to read:

29 1388.5. (a) For violations occurring on or after January 1,
30 2023, the amounts of the civil and administrative penalties
31 enumerated in Sections 1367.01, 1367.03, 1368, 1368.04, 1371.37,
32 1374.27, 1374.34, 1374.9, 1380, 1387, 1388, 1389.8, 1390, 1393.6,
33 and any other section in this chapter that enumerates a specific
34 penalty amount, shall be multiplied by four.

35 (b) For violations occurring on or after January 1, 2024, the
36 amounts of the civil and administrative penalties in subdivision
37 (a) shall also be subject to the annual adjustments described in
38 subdivision (b) of Section 1387.

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