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INSURANCE CODE - INS

DIVISION 1. GENERAL RULES GOVERNING INSURANCE [100 - 1879.8] (*Division 1 enacted by Stats. 1935, Ch. 145.*)

PART 2. THE BUSINESS OF INSURANCE [680 - 1879.8] (*Part 2 enacted by Stats. 1935, Ch. 145.*)

CHAPTER 1. General Regulations [680 - 1113] (*Chapter 1 enacted by Stats. 1935, Ch. 145.*)

ARTICLE 4.7. Multiple Employer Welfare Arrangements [742.20 - 742.43] (*Article 4.7 added by Stats. 1994, Ch. 1082, Sec. 1.*)

742.20. The Legislature finds and declares the following:

(a) An alternative to insurance programs, health care maintenance organizations, and panel provider organizations was established by Congress in 1974 through the Employee Retirement Income Security Act (ERISA). Among the various employee benefit programs established and governed by ERISA are multiple employer welfare arrangements (MEWA), which are subject as well to state regulatory and fiscal standards not inconsistent with ERISA. MEWAs permit employer members of trade associations to create trust funds for the purpose of offering and providing health care benefits to their employees. MEWAs can be created as fully insured or self-funded or partially self-funded benefit programs.

(b) The Legislature recognizes that some MEWAs provide an alternative mechanism to traditional health insurance for small employers. It is the intent of the Legislature to ensure the financial integrity of those MEWA programs that are already in existence by requiring self-funded or partially self-funded MEWAs to obtain a certificate of compliance from the Department of Insurance. In order for the Department of Insurance to grant a certificate of compliance, the MEWA must adhere to standards set forth in this act which are not inconsistent with the provisions of ERISA. Further, it is the intent of the Legislature to provide the Department of Insurance with the authority to levy monetary penalties and to revoke certificates of compliance from MEWAs that violate the provisions of this act.

(c) The Legislature has passed significant reforms in the area of small group health insurance. This article, in no manner, circumvents these reforms nor is it intended to be a precedent to do so. Therefore, the small group reform legislation applies to MEWAs to the extent it is not inconsistent with ERISA.

(d) The provisions of this article are consistent with and authorized by ERISA, which confers upon the states limited authority to regulate MEWAs.

(*Added by Stats. 1994, Ch. 1082, Sec. 1. Effective January 1, 1995.*)

742.21. "Multiple employer welfare arrangement" as used in this article has the same meaning as that contained in Section 1002(40)(A) of Title 29 of the United States Code. "Employee welfare benefit plan," as used in this article, has the same meaning as that contained in Section 1002(1) of Title 29 of the United States Code. A multiple employer welfare arrangement shall comply with the criteria set forth for an employee welfare benefit plan in order to qualify to obtain a certificate of compliance.

(*Added by Stats. 1994, Ch. 1082, Sec. 1. Effective January 1, 1995.*)

742.215. As used in this article, "self-funded" means a multiple employer welfare arrangement that undertook at all times and for a continuous period of five years to reimburse health benefit costs incurred by covered persons pursuant to the benefits and coverages provided by their plan exclusively from plan assets. "Partially self-funded" means a multiple employer welfare arrangement that undertook at all times and for a continuous period of five years to reimburse health benefit costs incurred by covered persons pursuant to the benefits and coverages provided by their plan exclusively from plan assets, provided, however, that these benefits are reimbursable to the multiple employer welfare arrangement by stop loss insurance only to the extent that the benefits exceed fifty thousand dollars (\$50,000) per claim.

(*Added by Stats. 1994, Ch. 1082, Sec. 1. Effective January 1, 1995.*)

742.22. It is the intent of the Legislature in enacting this article to allow a self-funded or partially self-funded multiple employer welfare arrangement to meet the requirements for a certificate of compliance to do business in California. If the self-funded or

partially self-funded multiple employer welfare arrangement obtains and maintains a certificate of compliance under these sections, it shall not be considered an unauthorized insurer.

(Added by Stats. 1994, Ch. 1082, Sec. 1. Effective January 1, 1995.)

742.23. (a) After December 31, 1995, a self-funded or partially self-funded multiple employer welfare arrangement shall not provide any benefits for any resident of this state without first obtaining a certificate of compliance pursuant to this article, provided, however, that if the commissioner has not issued or denied an application for a certificate of compliance within 180 calendar days of the date of the filing of the completed application, the commissioner shall not take any action against the applicant solely on the basis that the department has not granted the certificate of compliance.

(b) The department may take regulatory action against a MEWA pursuant to all applicable provisions of this code during the period beginning on the effective date of this act and ending on the date on which the MEWA is certified under this article, at which time the provisions of this article shall apply.

(Added by Stats. 1994, Ch. 1082, Sec. 1. Effective January 1, 1995.)

742.24. To be eligible for a certificate of compliance, a self-funded or partially self-funded multiple employer welfare arrangement shall meet all of the following requirements:

(a) Be nonprofit.

(b) Be established and maintained by a trade association, industry association, professional association, or by any other business group or association of any kind that has a constitution or bylaws specifically stating its purpose, and have been organized and maintained in good faith with at least 200 paid members and operated actively for a continuous period of five years, for purposes other than that of obtaining or providing health care coverage benefits to its members. An association is a California mutual benefit corporation comprised of a group of individuals or employers who associate based solely on participation in a specified profession or industry, accepting for membership any individual or employer meeting its membership criteria, which do not condition membership directly or indirectly on the health or claims history of any person, and which uses membership dues solely for and in consideration of the membership and membership benefits.

(c) Be organized and maintained in good faith with at least 2,000 employees and 50 paid employer members and operated actively for a continuous period of five years.

(d) Have been operating in compliance with ERISA on a self-funded or partially self-funded basis for a continuous period of five years pursuant to a trust agreement by a board of trustees that shall have complete fiscal control over the multiple employer welfare arrangement, and that shall be responsible for all operations of the multiple employer welfare arrangement. The trustees shall be selected by vote of the participating employers and shall be owners, partners, officers, directors, or employees of one or more employers participating in the multiple employer welfare arrangement. A trustee may not be an owner, officer, or employee of the insurer, administrator, or service company providing insurance or insurance-related services to the association. The trustees shall have authority to approve applications of association members for participation in the multiple employer welfare arrangement and to contract with an authorized administrator or service company to administer the day-to-day affairs of the multiple employer welfare arrangement.

(e) Benefits shall be offered only to association members.

(f) Benefits may be offered only through life agents, as defined in Section 1622, licensed in the state whose names, addresses, and telephone numbers have been filed with the commissioner as licensed life agents for the multiple employer welfare arrangement.

(g) Be operated in accordance with sound actuarial principles and conform to the requirements of Section 742.31.

(h) File an application with the department for a certificate of compliance no later than November 30, 1995.

(i) The multiple employer welfare arrangement shall at all times maintain aggregate stop loss insurance providing the arrangement with coverage with an attachment point which is not greater than 125 percent of annual expected claims. The commissioner may, by regulation, define "expected claims" for purposes of this subdivision and provide for adjustments in the amount of the percentage in specified circumstances in which the arrangement specifically provides for and maintains reserves in accordance with sound actuarial principles as provided in Section 742.31.

(j) The multiple employer welfare arrangement shall establish and maintain specific stop loss insurance providing the arrangement with coverage with an attachment point that is not greater than 5 percent of annual expected claims. The commissioner may, by regulation, define "expected claims" for purposes of this subdivision and provide for adjustments in the amount of that percentage as may be necessary to carry out the purposes of this subdivision determined by sound actuarial principles as provided in Section 742.31.

(k) The multiple employer welfare arrangement shall establish and maintain appropriate loss and loss adjustment reserves determined by sound actuarial principles as provided in Section 742.31.

(l) The association has within its own organization adequate facilities and competent personnel to serve the multiple employer welfare arrangement, or has contracted with a licensed third-party administrator to provide those services.

(m) The association has established a procedure for handling claims for benefits in the event of the dissolution of the multiple employer welfare arrangement.

(n) On and after January 1, 2003, in addition to the requirements of this article, maintain a surplus of not less than one million dollars (\$1,000,000), and that this amount be increased as follows: one million seven hundred fifty thousand dollars (\$1,750,000) by January 1, 2004; two million five hundred thousand dollars (\$2,500,000) by January 1, 2005; three million two hundred fifty thousand dollars (\$3,250,000) by January 1, 2006; and four million dollars (\$4,000,000) by January 1, 2007.

(o) Submit all proposed rate levels to the department for informational purposes no later than 45 days prior to their implementation. The proposed rates shall contain an aggregate benefit structure which has a loss ratio experience of not less than 80 percent. The loss ratio experience shall be calculated as claims paid during the contract period plus a reasonable estimate of claims liability for the contract period at the end of the current year divided by contributions paid or collected for the contract period minus unearned contributions at the end of the current year.

(p) Comply with the investment requirements of Section 724.245.

(Amended by Stats. 2005, Ch. 218, Sec. 1. Effective January 1, 2006.)

742.245. (a) A self-funded or partially self-funded multiple employer welfare arrangement shall maintain at least 25 percent of the surplus required by subdivision (n) of Section 742.24 in investments specified in Article 3 (commencing with Section 1170) of Chapter 2 of Part 2 of Division 1 and in Section 1192.5.

(b) The balance of the assets of a self-funded or partially self-funded multiple employer welfare arrangement may be invested in the following:

(1) An open-ended diversified management company, as defined in the federal Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), that meets all of the following requirements:

(A) It is registered with, and reports to, the Securities and Exchange Commission.

(B) It is domiciled in the United States.

(C) Substantially all of its investments consist of investment grade debt instruments and cash.

(D) All of its assets are held in the United States by a bank, trust company, or other custodian chartered by the United States, its states, or territories.

(2) An amount not to exceed 75 percent of any excess of invested assets over the sum of the reserves and related actuarial items held in support of policies and contracts, plus the surplus required by subdivision (n) of Section 742.24, may be invested in the following:

(A) An open-ended diversified management company, as defined in the federal Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), that meets all of the following requirements:

(i) It is registered with, and reports to, the Securities and Exchange Commission.

(ii) It is domiciled in the United States.

(iii) Its investments consist of common and preferred stocks and cash.

(iv) All of its assets are held in the United States by a bank, trust company, or other custodian chartered by the United States, its states, or territories.

(B) Corporate notes, bonds, and preferred stocks that meet all of the following requirements:

(i) The issuer is domiciled in the United States or Canada.

(ii) The investments are rated investment grade or better by at least two of the following rating agencies, or their successors:

(l) Standard & Poor's.

(II) Moody's.

(III) Fitch.

(iii) The investments are exchange-traded. "Exchange-traded" as used in this clause means listed and traded on the National Market System of the NASDAQ Stock Market or on a securities exchange subject to regulation, supervision, or control under a statute of the United States and acceptable to the commissioner.

(C) An investment in a single issuer made pursuant to subparagraph (B) shall not exceed in the aggregate 10 percent of the multiple employer welfare arrangement's funds described in this paragraph.

(3) An investment made pursuant to paragraph (1) or subparagraph (A) of paragraph (2) shall be made in, at minimum, three of the companies described in those provisions.

(4) An office building or buildings that will be used for the multiple employer welfare arrangement's principal operations and business if both of the following requirements are met:

(A) The multiple employer welfare arrangement obtains prior written approval from the commissioner.

(B) The office building or buildings are treated on the financial statements filed with the commissioner pursuant to Section 742.31 as nonadmitted assets.

(c) The commissioner may, in his or her discretion and after a hearing, require by written order disposal of an investment made either in violation of, or no longer in compliance with, this section. The commissioner may also, after a hearing, require the disposal of any investment made pursuant to paragraph (2) of subdivision (b) if the multiple employer welfare arrangement has failed to maintain cash or liquid assets sufficient to meet its claims and any other contractual obligations. The commissioner may also for good cause and after a hearing, by written order require the disposal of an investment described in subdivision (b).

(Amended by Stats. 2008, Ch. 428, Sec. 1. Effective January 1, 2009.)

742.25. In determining the qualification of a multiple employer welfare arrangement, the commissioner will consider, among other things:

(a) The history of the multiple employer welfare arrangement.

(b) The competency, character, integrity, responsibility, and general fitness of the management and administration.

(c) Financial stability.

(d) Whether claims were promptly and fairly adjusted and are promptly and fully paid in accordance with the law and the terms of the plan.

(e) Fairness and honesty of methods of doing business.

(f) Hazard to covered employees or creditors.

(Added by Stats. 1994, Ch. 1082, Sec. 1. Effective January 1, 1995.)

742.26. The multiple employer welfare arrangement shall issue to each covered employee a certificate evidencing coverage and a summary plan description of benefits and coverages provided. This evidence of the benefits and coverage provided shall contain the following statement: "The benefits and coverages described herein are provided through a trust fund established and funded by the ____ Plan, sponsored by the ____ Association. The trust is a self-funded plan established under ERISA (29 U.S.C. 1001 et seq.). This is not an insurance contract and the plan and trust is not acting as, or deemed to be an insurance company."

(Added by Stats. 1994, Ch. 1082, Sec. 1. Effective January 1, 1995.)

742.27. The department shall have the authority to revoke a certificate of compliance to any self-funded or partially self-funded multiple employer welfare arrangement if the department determines any of the following:

(a) The multiple employer welfare arrangement has failed, after written request by the commissioner, to remove or discharge any officer, director, trustee, or other employee who has been convicted of any crime involving fraud, dishonesty, or moral turpitude.

(b) The multiple employer welfare arrangement has unreasonably failed or refused to furnish any report or statement or has unreasonably refused the department access to its books or records as required by this article.

(c) The multiple employer welfare arrangement has failed for an unreasonable period to pay any judgment rendered against it by a court or other applicable regulatory agency or body.

(d) The multiple employer welfare arrangement is conducting business fraudulently or is not meeting its contractual obligations in good faith.

(e) The multiple employer welfare arrangement fails to comply with the provisions of Section 790.03.

(f) The multiple employer welfare arrangement fails to comply with Chapter 14 (commencing with Section 10700) of Part 2 of Division 2.

(g) The multiple employer welfare arrangement fails to comply with Article 3.1 (commencing with Section 1357) of Chapter 2.2 of Division 2 of the Health and Safety Code.

(h) The multiple employer welfare arrangement fails to establish, or at all times maintain, compliance with the requirements of this article, or other laws made applicable to the multiple employer welfare arrangement by this article.

(Added by Stats. 1994, Ch. 1082, Sec. 1. Effective January 1, 1995.)

742.28. A self-funded or partially self-funded multiple employer welfare arrangement authorized by this article shall be limited to providing the following benefits:

(a) Medical, dental, optical, surgical, or other hospital care benefits.

(b) Benefits in the event of sickness, accident, or disability.

(c) Flexible benefits under Section 125 of the Internal Revenue Code. These benefits shall not include loss from liability imposed by law upon employers to compensate employees and their dependents for injury sustained by the employees arising out of and in the course of the employment, irrespective of negligence or the fault of either party.

(Added by Stats. 1994, Ch. 1082, Sec. 1. Effective January 1, 1995.)

742.29. An association seeking to establish an employee welfare benefit plan by the use of a self-funded or partially self-funded multiple employer welfare arrangement shall apply for a certificate of compliance on a form prescribed by the commissioner. The application shall be completed and submitted to the commissioner along with all of the following:

(a) Copies of all articles, bylaws, agreements, or other documents or instruments describing the rights and obligations of the employers, employees, and beneficiaries of the association with respect to the multiple employer welfare arrangement.

(b) Current audited financial statements of the association and the multiple employer welfare arrangement, and Internal Revenue Service Form number 5500 for the last five years.

(c) Proof of a fidelity bond in an amount equal to 10 percent of the funds handled annually by the multiple employer welfare arrangement. In no case may the amount of the bond be less than fifty thousand dollars (\$50,000) nor more than five hundred thousand dollars (\$500,000).

(d) A fiduciary liability policy with limits of not less than five hundred thousand dollars (\$500,000).

(e) A statement showing in full detail the benefit plan upon which the association has established and maintained the multiple employer welfare arrangement.

(f) A copy of all contracts or other instruments that it makes with or issues to the association members, together with a copy of its plan description and the printed material which was used in enrolling members during 1993 and 1994.

(g) Proof of aggregate and specific stop loss insurance with an insurer licensed to do business in this state.

(h) A copy of all contracts or other instruments that were used with administrators and producers during 1993 and 1994.

(i) Biographical affidavits for the trustees, plan administrators of the multiple employer welfare arrangement, officers and directors of the association, other persons acting in a fiduciary capacity and any third-party administrators performing services on behalf of the multiple employer welfare arrangement.

(Added by Stats. 1994, Ch. 1082, Sec. 1. Effective January 1, 1995.)

742.30. The commissioner shall not issue a certificate of compliance to a self-funded or partially self-funded multiple employer welfare arrangement unless the employers participating in the multiple employer welfare arrangement are members of a bona fide trade, industrial, or professional association as described in subdivision (b) of Section 742.24.

(Added by Stats. 1994, Ch. 1082, Sec. 1. Effective January 1, 1995.)

742.31. Each self-funded or partially self-funded multiple employer welfare arrangement transacting business in the state shall file all of the following with the commissioner:

(a) No later than May 15th of each calendar year or four months and 15 days after the end of each fiscal year not on a calendar year basis, financial statements audited by a certified public accountant, and no later than March 1 of each calendar year or 60 days after the end of each fiscal year not on a calendar year basis, an actuarial opinion rendered by a qualified actuary that satisfies the requirements of Section 10489.15. The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board and on any additional standards that the commissioner may, by regulation, prescribe. For the purposes of this section,

"qualified actuary" means a member in good standing of the American Academy of Actuaries who meets the requirements set forth in regulations of the commissioner. The qualified actuary shall be liable for damages to any person caused by his or her negligence or other tortious conduct.

(b) Within 60 days after the end of each fiscal quarter, unaudited financial statements, affirmed by an appropriate officer or agent of the multiple employer welfare arrangement.

(c) Within 60 days after the end of each fiscal quarter, a report certifying that the multiple employer welfare arrangement maintains cash or liquid assets in a claim reserve account sufficient to meet its contractual obligations and that it maintains a policy of aggregate and specific stop loss insurance.

(Amended by Stats. 2002, Ch. 357, Sec. 2. Effective January 1, 2003.)

742.32. The commissioner or any persons designated by the commissioner shall have the power to examine the affairs of any self-funded or partially self-funded multiple employer welfare arrangement and the association which established and maintains it, and for that purpose shall have access to all books, records, and documents that relate to the business of the multiple employer welfare arrangement, and may examine under oath its trustees, officers, agents, and employees in relation to the affairs, transactions, and condition of the multiple employer welfare arrangement.

(Added by Stats. 1994, Ch. 1082, Sec. 1. Effective January 1, 1995.)

742.33. Books, records, and documents pertaining to the business of the multiple employer welfare arrangement shall be maintained by the administrator for a period of five years. "Administrator," as used in this section, has the same meaning as that contained in Section 1002(16)(A) of Title 29 of the United States Code.

(Amended by Stats. 1997, Ch. 17, Sec. 85. Effective January 1, 1998.)

742.34. (a) The following notice shall be provided to employers and employees who obtain coverage from a multiple employer welfare arrangement:

"NOTICE

(A) THE MULTIPLE EMPLOYER WELFARE ARRANGEMENT IS NOT AN INSURANCE COMPANY AND DOES NOT PARTICIPATE IN ANY OF THE GUARANTEE FUNDS CREATED BY CALIFORNIA LAW. THEREFORE, THESE FUNDS WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS IF A MULTIPLE EMPLOYER WELFARE ARRANGEMENT BECOMES INSOLVENT AND IS UNABLE TO MAKE PAYMENTS AS PROMISED.

(B) THE HEALTH CARE BENEFITS THAT YOU HAVE PURCHASED OR ARE APPLYING TO PURCHASE ARE BEING ISSUED BY A MULTIPLE EMPLOYER WELFARE ARRANGEMENT THAT IS LICENSED BY THE STATE OF CALIFORNIA.

(C) FOR ADDITIONAL INFORMATION ABOUT THE MULTIPLE EMPLOYER WELFARE ARRANGEMENT YOU SHOULD ASK QUESTIONS OF YOUR TRUST ADMINISTRATOR OR YOU MAY CONTACT THE CALIFORNIA DEPARTMENT OF INSURANCE AT _____."

(b) Each multiple employer welfare arrangement should include the department's current "800" consumer service telephone number and Internet Web site in the blank provided in paragraph (C) of this notice.

(c) This section shall become operative on January 1, 2017.

(Repealed (in Sec. 4) and added by Stats. 2015, Ch. 348, Sec. 5. (AB 1515) Effective January 1, 2016. Section operative January 1, 2017, by its own provisions.)

742.35. The department may conduct an examination of the financial condition of a self-funded or partially self-funded multiple employer welfare arrangement, and if it determines that the multiple employer welfare arrangement's financial condition does not comply with the requirements of this article, the department may apply any remedies authorized by this code.

(Added by Stats. 1994, Ch. 1082, Sec. 1. Effective January 1, 1995.)

742.36. Subject to the annual fee provisions of Section 742.39, every certificate of compliance shall be for an indefinite term and shall expire with the expiration or termination of the existence of the holder thereof. Notwithstanding the provisions of this section, whenever the commissioner shall determine, after notice and hearing, that any person to whom the certificate has been issued is in arrears to the state or to any county or city in the state for fees, licenses, taxes, assessments, fines, or penalties, accrued on business transacted in the state, or is otherwise in default for failure to comply with any of the laws of this state regarding the governmental control of the person by the state, the commissioner may order the certificate holder to comply with those

requirements within 30 days of that determination. If the certificate of compliance holder fails to comply within that period, the certificate of compliance may then be revoked, unless the commissioner's order is stayed by a court of appropriate jurisdiction.

(Added by Stats. 1994, Ch. 1082, Sec. 1. Effective January 1, 1995.)

742.37. (a) The commissioner may suspend the certificate of compliance of a holder thereof for not exceeding one year whenever he or she finds, after proper hearing following notice, that the person engages in any of the following practices:

(1) Conducting its business fraudulently.

(2) Not carrying out its contracts in good faith.

(3) Habitually and as a matter of ordinary practice and custom compelling claimants under policies, or liability judgment creditors of the certificate of compliance holder, to either accept less than the amount due under the terms of its contracts or resort to litigation against the certificate of compliance holder to secure the payment of the amount due.

(b) The order of suspension shall prescribe the period of each suspension.

(c) Proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except that the hearings shall be conducted by administrative law judges chosen under Section 11502 or appointed by the commissioner.

(Added by Stats. 1994, Ch. 1082, Sec. 1. Effective January 1, 1995.)

742.38. The commissioner, in any proceeding under Section 742.37 for any of the violations specified in that section, may by alternative order permit the holder of that certificate of compliance to elect in writing to pay a specified money penalty, within a specified time, in lieu of the suspension of its certificate of compliance. If the holder so elects, the sum of money specified shall be paid to the commissioner for use of the state, and shall not exceed fifty-five thousand dollars (\$55,000). If the holder so electing fails to pay the specified sum within the specified time, the commissioner shall, unless his or her order is stayed, put in effect the alternatives specified in his or her order.

All money received by the commissioner pursuant to this section shall, when appropriated for that purpose by the Legislature, be available for expenditure by the commissioner in accordance with law in administration and enforcement of this code and other insurance laws.

The authority vested in the commissioner by this section shall be additional to and not in lieu of any other authority to enforce any penalties, fines or forfeitures, denials, suspensions, restrictions, or revocations of certificates of compliance unless otherwise authorized by law.

(Added by Stats. 1994, Ch. 1082, Sec. 1. Effective January 1, 1995.)

742.39. The commissioner shall require the payment of five thousand two hundred twenty-nine dollars (\$5,229), in advance, as a fee for filing an application for each certificate of compliance. Notwithstanding Section 742.36, each holder of a certificate of compliance of indefinite term shall owe and pay an annual fee of four hundred twenty-four dollars (\$424), in advance, on account of the certificate until final expiration. In addition, each holder of a certificate of compliance of indefinite term shall owe and pay an annual fee of four hundred twenty dollars (\$420) for filing of financial information. These fees shall be for annual periods commencing on July 1 of each year and ending on June 30 of each year, and shall be due on each March 1 and be delinquent on and after April 1.

(Amended by Stats. 2017, Ch. 534, Sec. 9. (AB 1699) Effective January 1, 2018.)

742.40. (a) A multiple employer welfare arrangement shall offer health care coverage benefits to any new eligible person and his or her dependents under terms and conditions no less favorable to those offered to those offered to their employers' existing employees and their dependents, if the newly eligible person had health care benefit coverage with either the same or a different multiple employer welfare arrangement within 31 days. The new coverage shall comply with existing eligibility rules of the multiple employer welfare arrangement.

(b) A multiple employer welfare arrangement shall comply with the requirements set forth in Sections 10198.7 and 10198.9.

(c) Notwithstanding any other provision of law, commencing January 1, 2014, a multiple employer welfare arrangement shall not offer, market, represent, or sell any product, contract, or discount arrangement as minimum essential coverage or as compliant with the essential health benefits requirement under the federal Patient Protection and Affordable Care Act, unless it meets the applicable requirements under that act.

(Amended by Stats. 2012, Ch. 266, Sec. 1. (SB 615) Effective January 1, 2013.)

742.405. (a) No multiple employer welfare arrangement shall refuse to enroll any person or accept any person as a subscriber or renew any person as a subscriber after appropriate application on the basis of a person's genetic characteristics that may, under some circumstances, be associated with disability in that person or that person's offspring. No multiple employer welfare arrangement shall require a higher rate or charge, or offer or provide different terms, conditions, or benefits, on the basis of a person's genetic characteristics that may, under some circumstances, be associated with disability in that person or that person's offspring than is at that time required of any other individual in an otherwise identical classification, nor shall any multiple employer welfare arrangement make or require any rebate, discrimination, or discount upon the amount to be paid or the service to be rendered under the arrangement because the person carries those traits.

(b) No multiple employer welfare arrangement shall seek information about a person's genetic characteristics for any nontherapeutic purpose.

(c) No discrimination shall be made in the fees or commissions of a solicitor or solicitor firm for an enrollment or a subscription or the renewal of an enrollment or subscription of any person on the basis of a person's genetic characteristics that may, under some circumstances, be associated with disability in that person or that person's offspring.

(d) "Genetic characteristics" as used in this section shall have the same meaning as defined in Section 10123.3.

(Amended by Stats. 1998, Ch. 521, Sec. 3. Effective January 1, 1999.)

742.407. (a) This section shall apply to the disclosure of genetic test results contained in an applicant or enrollee's medical records by a multiple employer welfare arrangement.

(b) Any person who negligently discloses results of a test for a genetic characteristic to any third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization as described in subdivision (g), shall be assessed a civil penalty in an amount not to exceed one thousand dollars (\$1,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(c) Any person who willfully discloses the results of a test for a genetic characteristic to any third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization as described in subdivision (g), shall be assessed a civil penalty in an amount not less than one thousand dollars (\$1,000) and no more than five thousand dollars (\$5,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(d) Any person who willfully or negligently discloses the results of a test for a genetic characteristic to a third party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization as described in subdivision (g), that results in economic, bodily, or emotional harm to the subject of the test, is guilty of a misdemeanor punishable by a fine not to exceed ten thousand dollars (\$10,000).

(e) In addition to the penalties listed in subdivisions (b) and (c), any person who commits any act described in subdivision (b) or (c) shall be liable to the subject for all actual damages, including damages for economic, bodily, or emotional harm which is proximately caused by the act.

(f) Each disclosure made in violation of this section is a separate and actionable offense.

(g) The applicant's "written authorization," as used in this section, shall satisfy the following requirements:

(1) Is written in plain language.

(2) Is dated and signed by the individual or a person authorized to act on behalf of the individual.

(3) Specifies the types of persons authorized to disclose information about the individual.

(4) Specifies the nature of the information authorized to be disclosed.

(5) States the name or functions of the persons or entities authorized to receive the information.

(6) Specifies the purposes for which the information is collected.

(7) Specifies the length of time the authorization shall remain valid.

(8) Advises the person signing the authorization of the right to receive a copy of the authorization. Written authorization is required for each separate disclosure of the test results, and the authorization shall set forth the person or entity to whom the disclosure would be made.

(h) This section shall not apply to disclosures required by the Department of Health Services necessary to monitor compliance with Chapter 1 (commencing with Section 124975) of Part 5 of Division 106 of the Health and Safety Code, nor to disclosures required by

the Department of Managed Health Care necessary to administer and enforce compliance with Section 1374.7 of the Health and Safety Code.

(Amended by Stats. 2000, Ch. 857, Sec. 54. Effective January 1, 2001.)

742.41. All employer groups who have health care coverage benefits provided by a multiple employer welfare arrangement for their employees and their dependents, regardless of individual condition or history of that employee and their dependents, shall continue to provide coverage thereunder pursuant to the terms and conditions of their multiple employer welfare arrangement, subject to only cancellation for nonpayment of contribution, or in the event of the termination of the multiple employer welfare arrangement.

(Added by Stats. 1994, Ch. 1082, Sec. 1. Effective January 1, 1995.)

742.42. The provisions of this code governing domestic incorporated insurers, their business, and their contracts shall, so far as applicable and not inconsistent, govern multiple employer welfare arrangements subject to this article and the business and contracts of these multiple employer welfare arrangements, except that these multiple employer welfare arrangements, their business, and their contracts shall not be subject to Article 14.7 (commencing with Section 1067) of Chapter 1 of Part 2 of Division 1. There shall be a rebuttable presumption that any provision of this code is applicable to multiple employer welfare arrangements.

(Added by Stats. 1994, Ch. 1082, Sec. 1. Effective January 1, 1995.)

742.425. The provisions of this article shall not apply to multiple employer welfare arrangements as defined in Section 1144(b)(6)(D) of Title 29 of the United States Code.

(Added by Stats. 1994, Ch. 1082, Sec. 1. Effective January 1, 1995.)

742.43. The commissioner may adopt reasonable rules and regulations for the implementation and administration of this article.

(Added by Stats. 1994, Ch. 1082, Sec. 1. Effective January 1, 1995.)