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INSURANCE CODE - INS

DIVISION 2. CLASSES OF INSURANCE [1880 - 12880.8] (*Division 2 enacted by Stats. 1935, Ch. 145.)*

PART 2. LIFE AND DISABILITY INSURANCE [10110 - 11549] (*Part 2 enacted by Stats. 1935, Ch. 145.)*

CHAPTER 9. The Private Health Care Voluntary Purchasing Alliance Act [10800 - 10887] (*Chapter 9 added by Stats. 1996, Ch. 916, Sec. 1.)*

ARTICLE 3. Regulation [10820 - 10826] (*Article 3 added by Stats. 1996, Ch. 916, Sec. 1.)*

10820. (a) The commissioner shall regulate the establishment and conduct of purchasing alliances as set forth in this chapter.

(b) No person or entity may market, sell, offer, or contract for a package of one or more health benefit plans underwritten by two or more carriers to two or more employers or small employers or their eligible employees within a purchasing alliance without first being registered by the commissioner pursuant to this chapter. This subdivision does not apply to entities licensed by the Department of Managed Health Care as health care service plans or entities licensed by the Department of Insurance as disability insurers except that no licensed health care service plan or licensed disability insurer may be registered with the commissioner as a purchasing alliance. This chapter does not apply to any entity exempt pursuant to Section 1349.2 of the Health and Safety Code.

(c) A person or entity not registered by the commissioner as a purchasing alliance and engaged in the purchase, sale, marketing or distribution of health insurance or health care benefit plans shall not hold itself out as an alliance, health insurance purchasing alliance, purchasing alliance, health alliance, health insurance purchasing cooperative, or purchasing cooperative, or otherwise use a confusingly similar name.

(d) The commissioner shall establish six geographic service regions throughout which all purchasing alliances shall operate. These regions shall be established with no region smaller than an area in which the first three digits of all its postal ZIP Codes are in common within a county and shall divide no county into more than two service regions. Geographic service regions established pursuant to this section shall, as a group, cover the entire state, and the areas encompassed in geographic service regions shall be separate and distinct from regions encompassed in other geographic service regions. Geographic service regions may be noncontiguous.

(e) Nothing in this chapter shall be deemed to be in conflict with or limit the duties and powers granted to the commissioner under the laws of this state.

(f) Purchasing alliances shall report to the commissioner any suspected or alleged law violations of this chapter.

(g) Violations of this chapter shall be subject to the penalties outlined hereafter.

(h) The commissioner shall adopt reasonable rules and regulations as are necessary to administer this chapter.

(i) Nothing in this chapter shall be construed or interpreted to apply to an entity that has been approved by the Director of the Department of Managed Health Care, pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, to act as a solicitor and third-party administrator with respect to a multiple carrier or health care service plan marketing cooperative in which each carrier or health care service plan contracts directly with subscribing groups or individuals for the provision of health care, for the arranging for the provision of health care, or for the provision of coverage for health care.

(Amended by Stats. 2000, Ch. 857, Sec. 71. Effective January 1, 2001.)

10821. (a) An entity seeking to obtain a certificate of registration to act as a purchasing alliance shall complete and file with the commissioner an application designated by the commissioner. An application will not be deemed filed until all information necessary to properly process the application has been received by the commissioner.

(b) Upon filing, the commissioner shall make a determination concerning the application and provide notice of file determination to the applicant within 180 days of the date the application is deemed filed. If approved, a copy of a certificate of registration, in a form designed by the commissioner, shall be provided to the purchasing alliance. The certificate of registration shall serve as authorization to operate pursuant to this chapter.

(c) A purchasing alliance shall maintain a minimum net worth of forty thousand dollars (\$40,000) plus one months operating expenses as reserves. Net worth is defined as the excess of admitted assets over all liabilities.

(d) A purchasing alliance shall at all times maintain current assets of at least ten thousand dollars (\$10,000) in excess of current liabilities, as such current assets and liabilities may be defined pursuant to regulations made by the commissioner. In making those regulations, the commissioner shall be guided by generally accepted accounting principles followed by certified public accountants in this state.

(e) The entity that is seeking to obtain a certificate of registration to act as a purchasing alliance shall file with the commissioner the following information or documents:

(1) At the time of initial registration, the entity shall provide a written description as to how the entity intends to meet the public policy objectives of increased access and improved quality of health care services.

The written description shall also demonstrate that the purchasing alliance will have the technical expertise and physical capacity to serve employers or small employers and their eligible employees in this state.

The written description shall also describe the scope of services to be offered in this state and the resources and expertise to be used to implement and administer those services.

(2) Current partnership agreements, articles of incorporation, trust documents, or similar documents establishing the group.

(3) Current bylaws of the group.

(4) A statement of grievance procedures relative to the eligibility, enrollment, premium collection, and administrative services provided by the alliance.

(5) A statement of enrollment procedures and requirements, including participation and contribution rules and requirements.

(6) A statement of disenrollment criteria and procedures.

(7) A statement of payment procedures, late payment procedures, and grace periods.

(8) A purchasing alliance shall demonstrate to the satisfaction of the commissioner that its governance makes it an appropriate and effective representative of employers or small employers and their eligible employees' interests throughout this state. A purchasing alliance shall organize and facilitate competition between multiple unaffiliated carriers.

(9) A list of owners, partners, officers, and directors of the applicant and the contracted management company or third-party administrator, if such are employed, and personal biographical information or firm descriptions for each. The owners, partners, officers, directors, and contracted managers and administrators shall not have a prior record of administrative, civil, or criminal violations within any financial service industry.

The personal biographical information and firm descriptions shall demonstrate by clear and convincing evidence that those involved in the operation of the alliance have the expertise, experience, and character to effectively and professionally represent employers or small employers and their eligible employees in a fiduciary capacity.

(10) Evidence of adequate security and prudence in the accounting, deposit, collection, handling, and transfer of moneys. A purchasing alliance shall affirmatively demonstrate adequate financial controls to the satisfaction of the commissioner as a condition of being issued a certificate of registration.

(11) A description of the employers or small employers and their eligible employees to which the purchasing alliance will be marketing. A purchasing alliance shall demonstrate to the satisfaction of the commissioner that it will fairly and affirmatively offer, market, and sell all of its available small employer health benefit plan products to all small employers throughout all the service regions in this state.

(12) Disclosure of any preexisting oral or written agreements.

(13) Any other information required by the commissioner deemed pertinent to the policies and operation of the alliance.

(f) Thirty days prior to any amendment or modification to any of the documents submitted pursuant to subdivision (e), the alliance shall file with the commissioner a copy of the amended or modified document. Any amendment or modification shall be deemed approved if the commissioner has not disapproved the document within 30 days.

(Added by Stats. 1996, Ch. 916, Sec. 1. Effective January 1, 1997.)

10821.5. (a) The purchasing alliance shall furnish an annual financial audit to the commissioner on the forms provided by the commissioner. The annual financial audit may be filed either on a calendar year basis on or before March 31, or, if approved in writing by the commissioner in respect to any individual purchasing alliance, on a fiscal year basis on or before 90 days after the end

of the fiscal year. The deadline for filing the annual audit may be extended by the commissioner for good cause, as determined by the commissioner for a period not to exceed 60 days. Failure to submit an audit on time, or within any extended time that the commissioner may grant, shall be grounds for an order by the commissioner to prohibiting the alliance from accepting any new business pursuant to this section. The audits shall be private, except that a synopsis of the balance sheet on a form prescribed by the commissioner may be made available to the public upon request. The audits shall be conducted and prepared in accordance with generally accepted auditing standards by an independent certified public accountant or independent licensed public accountant whose certification or license is in good standing at the time of the preparation. The fee for filing of the audit shall be three hundred thirteen dollars (\$313). Any purchasing alliance that fails to file any audit or other report on or before the date it is due shall pay to the commissioner a penalty fee of one hundred eighteen dollars (\$118) payable within 30 days of the due date of the audit and on failure to pay that fine or any fee or file the audit required by this section, shall forfeit the privilege of accepting new business until the delinquency is corrected. The commissioner may refuse to accept an audit or order a new audit for any of the following reasons:

(1) Adverse result in any proceeding before the California Board of Accountancy affecting the auditor's license.

(2) The auditor has an affiliation with the purchasing alliance or any of its officers or directors that could prevent his or her reports on the purchasing alliance from being reasonably objective.

(3) The auditor has been convicted of any misdemeanor or felony based on his or her activities as an accountant.

(4) Judgment adverse to the auditor in any civil action finding him or her guilty of fraud, deceit, or misrepresentation in the practice of his or her profession.

(b) Financial and performance audits or examinations of the purchasing alliance shall be conducted by the commissioner once every two years. The cost of the examinations or audits are to be paid by the purchasing alliance. The commissioner may impose conditions on registration, or continued registration to remedy compliance or performance problems.

(c) At any time the commissioner determines, after notice and hearing, that a purchasing alliance registered under this article has willfully failed to comply with any of the provisions of this section, the commissioner shall make his or her order prohibiting the purchasing alliance from conducting its business for a period not to exceed one year.

Any purchasing alliance violating an order made under this subdivision is subject to seizure under Article 14 (commencing with Section 1010) of Chapter 1 of Part 2 of Division 1, is guilty of a misdemeanor, and may have its certificate of registration revoked by the commissioner. Any person aiding and abetting any purchasing alliance in violation of that order is guilty of a misdemeanor.

The purpose of this section is to maintain the solvency of the purchasing alliance subject to this article and to protect the public by preventing fraud and requiring fair dealing. The audit shall be designed to ensure that the purchasing alliance is not a risk-bearing entity, to ensure sound financial controls and money management, and to prevent mismanagement or misappropriation of funds either through neglect or malfeasance. In order to carry out those purposes the commissioner shall make reasonable rules and regulations to govern the conduct of the business of the purchasing alliance subject to this chapter.

(d) The commissioner shall establish fees for initial registration of a purchasing alliance and for renewal of registration of a purchasing alliance in an amount sufficient to cover the costs of administering this chapter. A purchasing alliance shall pay the initial registration fee at the time of application for registration, and the renewal fee at the time of application for renewal.

(Amended by Stats. 2000, Ch. 1055, Sec. 49. Effective September 30, 2000.)

10822. After the issuance or reissuance of a certificate of registration to act as a purchasing alliance, the holder shall continue to comply with the requirements as to its business set forth in this chapter and in the other applicable sections of this code, and in the other laws of this state.

(Added by Stats. 1996, Ch. 916, Sec. 1. Effective January 1, 1997.)

10823. In addition to any other grounds specified in this chapter, the following constitute grounds for denial, nonrenewal, suspension, or revocation of an application or existing certificate of registration, following notice and an opportunity for hearing:

(a) Failure to comply with the provisions of this chapter.

(b) Failure to disclose a preexisting oral or written agreement during the alliance application process.

(c) Failure to fairly and affirmatively offer, market, and sell all of the health benefit plan designs offered through a purchasing alliance that are sold or offered to small employers to all small employers.

(d) Failure to have adequate controls or failure to follow approved procedures.

(e) Failure to meet minimum standards in a financial or performance audit or examination.

(f) Failure to comply with a lawful order of the commissioner.

(g) Committing an unfair or deceptive act or practice as defined in Section 17200 of the Business and Professions Code or under Chapter 6.5 (commencing with Section 790) of Part 2 of Division 1.

- (h) Filing any necessary form with the commissioner that contains fraudulent information or omission.
- (i) Misappropriation, conversion, illegal withholding, or refusal to pay over upon proper demand any moneys that belong to a person or participating carrier otherwise not entitled to the alliance and that have been entrusted to the alliance in its fiduciary capacity.
- (j) Operation of the purchasing alliance that is at variance with the basic organizational documents as filed pursuant to this chapter or as published by the purchasing alliance, or in any manner contrary to that described in, or reasonably inferred from, the purchasing alliance's application for certification and annual report, or any modification thereof, unless amendments allowing the variation have been submitted to, and approved by, the commissioner pursuant to this chapter.
- (k) The continued operation of the purchasing alliance will constitute a substantial risk to its subscribers and enrollees.
- (l) The purchasing alliance has violated, attempted to violate, or conspired to violate, directly or indirectly, or assisted in or abetted a violation or conspiracy to violate any provision of this chapter or any rule or regulation adopted by the commissioner pursuant to this chapter.
- (m) The purchasing alliance has permitted, or aided or abetted, any violation by an employee or contractor who is a holder of any license, certificate, permit, or registration issued pursuant to the Business and Professions Code, the Health and Safety Code, or this code, which violation would constitute grounds for discipline against that licensee, or certificate, permit, or registration holder.
- (n) The purchasing alliance has aided, abetted, or permitted the commission of any illegal acts.
- (o) The purchasing alliance, its management company, or any other affiliate of the purchasing alliance, or any controlling person, officer, director, or other person occupying a principal management or supervisory position in the purchasing alliance, management company, or affiliate, has been convicted or pleaded no contest to a crime, or committed any act involving dishonesty, fraud, or deceit, which crime or act is substantially related to the qualifications, functions, or duties of that person under this chapter. The commissioner may revoke or deny a certificate issued under this chapter irrespective of a subsequent order under Section 1203.4 of the Penal Code.

(Added by Stats. 1996, Ch. 916, Sec. 1. Effective January 1, 1997.)

10824. (a) The commissioner may take disciplinary action against a purchasing alliance if the commissioner determines that the purchasing alliance has committed any of the acts set forth in Section 10823. The disciplinary action may include censuring the purchasing alliance, or prohibiting for a period not exceeding 24 months or barring permanently, a person, partnership, corporation, or trust from acting as a purchasing alliance.

(b) The commissioner shall notify the purchasing alliance of any order that suspends or bars a person from engaging in operations as a purchasing alliance. It shall be unlawful for any purchasing alliance, after receipt of notice of the order, to enroll any new employers or small employers.

(c) The commissioner may prohibit any person from serving as an officer, director, employee, or associate of any purchasing alliance or solicitor firm of any purchasing alliance, or any management company of any purchasing alliance, or as a solicitor or agent if any of the following applies:

(1) The prohibition is in the public interest and the person has committed or caused, participated in, or had knowledge of, and failed to properly report a violation of this chapter by a purchasing alliance, management company, or solicitor firm.

(2) The person was an officer, director, employee, associate, or provider of a purchasing alliance or of a management company or solicitor firm of any purchasing alliance whose certificate has been suspended or revoked pursuant to this section and the person had knowledge of and failed to report, or participated in, any of the prohibited acts for which the certificate was suspended or revoked.

(3) The person was an officer director, employee, or associate of a purchasing alliance that has been the subject of an order of suspension or bar from engaging in operations as a purchasing alliance under this section and the person had knowledge of, or participated in, any of the prohibited acts for which the order was issued. A proceeding for the issuance of an order under this subdivision may be included with a proceeding against a purchasing alliance under this section, or may conduct a separate proceeding.

(4) The person has been convicted or pleaded no contest to a crime, or committed any act involving dishonesty, fraud, or deceit, which crime or act is substantially related to the qualifications, functions, or duties of the person under this chapter.

(d) Any disciplinary action under Section 10823 and this section shall be conducted in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).

(Added by Stats. 1996, Ch. 916, Sec. 1. Effective January 1, 1997.)

10825. (a) A purchasing alliance whose certificate has been revoked or suspended for more than one year may petition the commissioner to reinstate the certificate as provided by Section 11522 of the Government Code. No petition may be considered if the petitioner is under criminal sentence for a violation of this chapter, or for any offense that would constitute grounds for discipline or denial of registration under this chapter, including any period of probation or parole.

(b) A purchasing alliance that is barred or suspended for more than one year from acting as such, or that is subject to an order imposing discipline that by its terms is effective for more than one year, may petition the commissioner to reduce by order the penalty in a manner generally consistent with the provisions of Section 11522 of the Government Code. No petition may be considered if the petitioner is under criminal sentence for a violation of this chapter, or for any offense that would constitute grounds for discipline or denial of registration under this chapter, including any period of probation or parole.

(c) The petition for restoration shall be in the form prescribed by the commissioner and the commissioner may condition the granting of the petition on any additional information and undertakings that the commissioner may require in order to determine whether the purchasing alliance, if restored, would engage in business in full compliance with the objectives and provisions of this chapter and the rules and regulations adopted by the commissioner under this chapter.

(d) The commissioner may prescribe a fee not to exceed one thousand dollars (\$1,000) for the filing of a petition for restoration pursuant to this section. In addition, the commissioner may condition the granting of the petition to a purchasing alliance upon payment of the assessment due and unpaid as of December 15 during the preceding 12-calendar-month period, and if the purchasing alliance's suspension or revocation was in effect for more than 12 months, upon the filing of a new application for registration as a purchasing alliance and the payment of the fee for certification.

(Added by Stats. 1996, Ch. 916, Sec. 1. Effective January 1, 1997.)

10826. (a) Any person who violates any provision of this chapter, or who violates any rule or order adopted or issued pursuant to this chapter, shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the state by the commissioner in any court of competent jurisdiction.

(b) As applied to the civil penalties for acts in violation of this chapter, the remedies provided by this article and by other sections of this chapter are not exclusive, and may be sought and employed in any combination to enforce this chapter.

(c) No action may be maintained to enforce any liability created under article unless brought before the expiration of four years after the act or transaction constituting the violation.

(d) The commissioner shall be able to recover the costs of investigating an alleged violation of this chapter in which a violation has been determined.

(Added by Stats. 1996, Ch. 916, Sec. 1. Effective January 1, 1997.)