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HEALTH AND SAFETY CODE - HSC

DIVISION 2. LICENSING PROVISIONS [1200 - 1796.70] (*Division 2 enacted by Stats. 1939, Ch. 60.*)

CHAPTER 2.2. Health Care Service Plans [1340 - 1399.874] (*Chapter 2.2 added by Stats. 1975, Ch. 941.*)

ARTICLE 7. Discipline [1386 - 1389] (*Article 7 added by Stats. 1975, Ch. 941.*)

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

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

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

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

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

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

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

(6) The plan has violated or 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, any rule or regulation adopted by the director pursuant to this chapter, or any order issued by the director pursuant to this chapter.

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

(8) The plan has permitted, or aided or abetted any violation by an employee or contractor who is a holder of any certificate, license, permit, registration, or exemption issued pursuant to the Business and Professions Code or this code that would constitute grounds for discipline against the certificate, license, permit, registration, or exemption.

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

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

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

(12) The plan, its management company, or any other affiliate of the plan, or any controlling person, officer, director, or other person occupying a principal management or supervisory position in the plan, management company, or affiliate, has been convicted of or pleaded nolo contendere 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 a person engaged in business in accordance with this chapter. The director may revoke or deny a license hereunder irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

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

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

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

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

(17) The plan violates Section 1262.8.

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

(19) The plan fails to comply with a corrective action plan in a timely manner, consistent with Section 1380, this section, or other provisions of this chapter.

(20) The plan fails to respond fully or timely, or both, to a duly authorized request for production of records.

(c) In addition to the authority to conduct an onsite medical survey and prepare a corrective plan pursuant to Section 1380 and to conduct an assessment of the health care service plan's financial health, including, but not limited to, identification of the plan's available reserves, the director may impose a corrective action plan to require future compliance by the health care service plan with any other provision of this chapter. Failure by the health care service plan to comply with a corrective action plan imposed pursuant to this subdivision in a timely manner appropriate for rectifying noncompliance shall be monitored by the department through medical surveys, financial examinations, or other means necessary to assure timely compliance.

(d) (1) When assessing administrative penalties against a health plan, or civil penalties pursuant to Section 1387, the director shall determine the appropriate amount of the penalty for each violation of this chapter based upon one or more factors, as applicable, including, but not limited to, the following:

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

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

(C) The plan's history of violations.

(D) The willfulness of the violation.

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

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

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

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

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

(J) Whether the violation is an isolated incident.

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

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

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

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

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

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

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

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

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

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

(Amended by Stats. 2024, Ch. 760, Sec. 3. (AB 3221) Effective January 1, 2025.)

1387. (a) (1) A person who violates a provision of this chapter, or who violates a rule or order adopted or issued pursuant to this chapter, shall be liable for a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the director in any court of competent jurisdiction.

(2) In assessing a civil penalty, the director shall determine the appropriate amount after considering one or more factors enumerated in subdivision (d) of Section 1386, as applicable.

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

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

(d) Commencing January 1, 2028, and every five years thereafter, the penalty amount specified in this section shall be adjusted based on the average rate of change in premium rates for the individual and small group markets, and weighted by enrollment, since the previous adjustment.

(Amended by Stats. 2022, Ch. 985, Sec. 5. (SB 858) Effective January 1, 2023.)

1388. (a) The director may, after appropriate notice and opportunity for hearing, by order, censure a person acting as a solicitor or solicitor firm, or suspend for a period not exceeding 24 months or bar a person from operating as a solicitor or solicitor firm, or assess administrative penalties against a person acting as a solicitor or solicitor firm if the director determines that the person has committed any of the acts or omissions constituting grounds for disciplinary action.

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

(1) The continued operation of the solicitor or solicitor firm in a manner that may constitute a substantial risk to a plan or subscribers and enrollees.

(2) The solicitor or solicitor firm has violated or 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, any rule or regulation adopted by the director pursuant to the chapter, or any order issued by the director pursuant to this chapter.

(3) The solicitor or solicitor firm has engaged in any conduct that constitutes fraud or dishonest dealing or unfair competition, as defined by Section 17200 of the Business and Professions Code.

(4) The engagement of a person as an officer, director, employee, or associate of the solicitor firm contrary to the provisions of an order issued by the director pursuant to subdivision (d) of this section or subdivision (c) of Section 1386.

(5) The solicitor or solicitor firm, or its management company, or any other affiliate of the solicitor firm, or any controlling person, officer, director, or other person occupying a principal management or supervisory position in that solicitor firm, management company, or affiliate, has been convicted or pleaded nolo contendere 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 a person engaged in business in accordance with the provisions of this chapter. The director may issue an order hereunder irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(c) The director shall notify plans of any order issued pursuant to subdivision (a) which suspends or bars a person from engaging in operations as a solicitor or solicitor firm. It shall be unlawful for any plan, after receipt of notice of the order, to receive any new subscribers or enrollees through that person or to otherwise utilize any solicitation services of that person in violation thereof.

(d) (1) The director may prohibit any person from serving as an officer, director, employee, or associate of any plan or solicitor firm, or as a solicitor, if that person was an officer, director, employee, or associate of a solicitor firm that has been the subject of an order of suspension or bar from engaging in operations as a solicitor firm pursuant to this section and that person had knowledge of, or participated in, any of the prohibited acts for which the order was issued.

(2) A proceeding for the issuance of an order under this subdivision may be included with a proceeding against a solicitor firm under this section or may constitute a separate proceeding, subject in either case to subdivision (e).

(e) A proceeding for the issuance of an order under this section shall be subject to appropriate notice to, and the opportunity for a hearing with regard to, the person affected in accordance with subdivision (a) of Section 1397.

(Amended by Stats. 1999, Ch. 525, Sec. 134. Effective January 1, 2000. Operative July 1, 2000, or sooner, by Sec. 214 of Ch. 525.)

1389. (a) A person whose license has been revoked, or suspended for more than one year, may petition the director to reinstate the license 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 any offense which would constitute grounds for discipline, or denial of licensure under this chapter, including any period of probation or parole.

(b) A person who is barred, or suspended for more than one year, from acting as a solicitor or solicitor firm pursuant to Section 1388, or who is subject to an order, pursuant to subdivision (c) of Section 1386 or subdivision (d) of Section 1388, which by its terms is effective for more than one year, may petition the director to reduce by order such 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 any offense which would constitute grounds for discipline under this chapter, including any period of probation or parole.

(c) The petition for restoration shall be in the form prescribed by the director and the director may condition the granting of such petition upon such additional information and undertakings as the director may require in order to determine whether such person, 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 director pursuant to this chapter.

(d) The director may, by rule, prescribe a fee not to exceed five hundred dollars (\$500) for the filing of a petition for restoration pursuant to this section. In addition, the director may condition the granting of such a petition to a plan upon payment of the assessment due and unpaid pursuant to subdivision (b) of Section 1356 as of the 15th day of December occurring within the preceding 12-calendar months and, if the plan's suspension or revocation was in effect for more than 12 months, upon the filing of a new plan application and the payment of the fee prescribed by subdivision (a) of Section 1356.

(Amended by Stats. 1999, Ch. 525, Sec. 135. Effective January 1, 2000. Operative July 1, 2000, or sooner, by Sec. 214 of Ch. 525.)