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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 8. Other Enforcement Procedures [1390 - 1394.3]** ( *Article 8 added by Stats. 1975, Ch. 941.* )

**1390.** (a) Any person who willfully violates any provision of this chapter or of any rule or order thereunder shall upon conviction be fined not more than twenty thousand dollars (\$20,000) or imprisoned pursuant to subdivision (h) of Section 1170 of the Penal Code, or in a county jail for not more than one year, or be punished by both that fine and imprisonment, but no person may be imprisoned for the violation of any rule or order if it is proven that the person had no knowledge of the rule or order.

(b) Commencing January 1, 2028, and every five years thereafter, the fine 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. 7. (SB 858) Effective January 1, 2023.)

**1391.** (a) (1) The director may issue an order directing a plan, solicitor firm, or any representative thereof, a solicitor, or any other person to cease and desist from engaging in any act or practice in violation of the provisions of this chapter, any rule adopted pursuant to this chapter, or any order issued by the director pursuant to this chapter.

(2) If the plan, solicitor firm, or any representative thereof, or solicitor, or any other person fails to file a written request for a hearing within 30 days from the date of service of the order, the order shall be deemed a final order of the director and shall not be subject to review by any court or agency, notwithstanding subdivision (b) of Section 1397.

(b) If a timely request for a hearing is made by a licensed plan, the request shall automatically stay the effect of the order only to the extent that the order requires the cessation of operation of the plan or prohibits acceptance of new members by the plan or both. However, no automatic stay shall be issued if any examination or inspection of the plan performed by the director discloses, or reports or documents submitted to the director by the plan on their face show, that the plan is in violation of any fiscal requirement of this chapter or in violation of any requirement of Section 1384 or 1385. In the event of an automatic stay, only that portion of the order requiring cessation of operation or prohibiting enrollment shall be stayed and all other portions of the order shall remain effective. If a hearing is held, and a finding is made that the health or safety of the members and potential members of the plan might be adversely affected by its continued operation, the stay shall be terminated. This finding shall be made, if at all, not later than 30 days after the date of the hearing.

(c) If a timely request for a hearing is made by an unlicensed plan, the director may stay the effect of the order to the extent that the order requires the cessation of operation of the plan or prohibits acceptance of new members by the plan, for that period and subject to those conditions that the director may require, upon a determination by the director that the action would be in the public interest.

(Amended by Stats. 1999, Ch. 525, Sec. 138. Effective January 1, 2000. Operative July 1, 2000, or sooner, by Sec. 214 of Ch. 525.)

**1391.5.** (a) If, after examination or investigation, the director has reasonable grounds to believe that irreparable loss and injury to the plan's enrollee or enrollees occurred or may occur as a result of any act or practice unless the director acts immediately, the director may, by written order, addressed to that person, order the discontinuance of the unsafe or injurious act or practice. The order shall become effective immediately, but shall not become final except in accordance with this section.

(b) No order issued pursuant to this section shall become final except after notice to the affected person of the director's intention to make the order final and of the reasons for the finding. The director shall also notify that person that upon receiving a request for hearing by the plan, the matter shall be set for hearing to commence with 15 business days after receipt of the request, unless that person consents to have the hearing commence at a later date.

(c) If no hearing is requested within 15 days after the mailing or service of the required notice, and none is ordered by the director, the order shall become final on the 15th day without a hearing and shall not be subject to review by any court or agency notwithstanding subdivision (b) of Section 1397.

(d) If a hearing is requested or ordered, it shall be held in accordance with the provisions of the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and the director shall have all of the powers granted under that act.

(e) If, upon conclusion of the hearing, it appears to the director that the affected person has conducted business in an unsafe or injurious manner, the director shall make the order of discontinuance final.

(f) For purposes of this section, "person" includes any plan, solicitor firm, or any representative thereof, a solicitor, or any other person defined in subdivision (j) of Section 1345.

*(Amended by Stats. 2000, Ch. 857, Sec. 44. Effective January 1, 2001.)*

**1392.** (a) (1) Whenever it appears to the director that any person has engaged, or is about to engage, in any act or practice constituting a violation of any provision of this chapter, any rule adopted pursuant to this chapter, or any order issued pursuant to this chapter, the director may bring an action in superior court, or the director may request the Attorney General to bring an action to enjoin these acts or practices or to enforce compliance with 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, or to obtain any other equitable relief.

(2) If the director determines that it is in the public interest, the director may include in any action authorized by paragraph (1) a claim for any ancillary or equitable relief and the court shall have jurisdiction to award this additional relief.

(3) Upon a proper showing, a permanent or preliminary injunction, restraining order, writ of mandate, or other relief shall be granted, and a receiver, monitor, conservator, or other designated fiduciary or officer of the court may be appointed for the defendant or the defendant's assets.

(b) A receiver, monitor, conservator, or other designated fiduciary, or officer of the court appointed by the superior court pursuant to this section may, with the approval of the court, exercise any or all of the powers of the defendant's officers, directors, partners, or trustees, or any other person who exercises similar powers and performs similar duties, including the filing of a petition for bankruptcy. No action at law or in equity may be maintained by any party against the director, or a receiver, monitor, conservator, or other designated fiduciary or officer of the court by reason of their exercising these powers or performing these duties pursuant to the order of, or with the approval of, the superior court.

*(Amended by Stats. 1999, Ch. 525, Sec. 140. Effective January 1, 2000. Operative July 1, 2000, or sooner, by Sec. 214 of Ch. 525.)*

**1392.5.** (a) This section applies to every action brought in the name of the people of the State of California by the Director of the Department of Managed Health Care before, on, or after the effective date of this section, when enforcing provisions of those laws administered by the Director of the Department of Managed Health Care which authorize the Director of the Department of Managed Health Care to seek a permanent or preliminary injunction, restraining order, or writ of mandate, or the appointment of a receiver, monitor, conservator, or other designated fiduciary or officer of the court. Upon a proper showing, a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted and a receiver, monitor, conservator, or other designated fiduciary or officer of the court may be appointed for the defendant or the defendant's assets, or any other ancillary relief may be granted as appropriate. The court may order that the expenses and fees of the receiver, monitor, conservator, or other designated fiduciary or officer of the court, be paid from the property held by the receiver, monitor, conservator, or other court-designated fiduciary or officer, but neither the state, the Health and Human Services Agency, nor the Department of Managed Health Care shall be liable for any of those expenses and fees, unless expressly provided for by written contract.

(b) The receiver, monitor, conservator, or other designated fiduciary or officer of the court may do any of the following subject to the direction of the court:

(1) Sue for, collect, receive, and take into possession all the real and personal property derived by any unlawful means, including property with which that property or the proceeds thereof has been commingled if that property or the proceeds thereof cannot be identified in kind because of the commingling.

(2) Take possession of all books, records, and documents relating to any unlawfully obtained property and the proceeds thereof. In addition, they shall have the same right as a defendant to request, obtain, inspect, copy, and obtain copies of books, records, and documents maintained by third parties that relate to unlawfully obtained property and the proceeds thereof.

(3) Transfer, encumber, manage, control, and hold all property subject to the receivership, including the proceeds thereof, in the manner directed or ratified by the court.

(4) Avoid a transfer of any interest in any unlawfully obtained property including the proceeds thereof to any person who committed, aided or abetted, or participated in the commission of unlawful acts or who had knowledge that the property had been unlawfully obtained.

(5) Avoid a transfer of any interest in any unlawfully obtained property including the proceeds thereof made with the intent to hinder or delay the recovery of that property or any interest in it by the receiver or any person from whom the property was unlawfully obtained.

(6) Avoid a transfer of any interest in any unlawfully obtained property including the proceeds thereof that was made within one year before the date of the entry of the receivership order if less than a reasonably equivalent value was given in exchange for the transfer, except that a bona fide transferee for value and without notice that the property had been unlawfully obtained may retain the interest transferred until the value given in exchange for the transfer is returned to the transferee.

(7) Avoid a transfer of any interest in any unlawfully obtained property including the proceeds thereof made within 90 days before the date of the entry of the receivership order to a transferee from whom the defendant unlawfully obtained some property if (A) the receiver establishes that the avoidance of the transfer will promote a fair pro rata distribution of restitution among all people from whom defendants unlawfully obtained property and (B) the transferee cannot establish that the specific property transferred was the same property that had been unlawfully obtained from the transferee.

(8) Exercise any power authorized by statute or ordered by the court.

(c) A person with actual or constructive notice of the receivership shall not interfere with the discharge of the receiver's duties.

(d) A person shall not file any action or enforce or create any lien, or cause to be issued, served, or levied any summons, subpoena, attachment, or writ of execution against the receiver or any property subject to the receivership without first obtaining prior court approval upon motion with notice to the receiver and the Director of the Department of Managed Health Care. Any legal procedure described in this subdivision commenced without prior court approval is void except as to a bona fide purchaser or encumbrancer for value and without notice of the receivership. A person without notice of the receivership shall not incur any liability for commencing or maintaining any legal procedure described by this subdivision.

(e) The court shall have jurisdiction of all questions arising in the receivership proceedings and may make any orders and judgments as may be required, including orders after noticed motion by the receiver to avoid transfers as provided in paragraphs (4), (5), (6), and (7) of subdivision (b).

(f) This section is cumulative to all other provisions of law.

(g) If any provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(h) The recordation of a copy of the receivership order imparts constructive notice of the receivership in connection with any matter involving real property located in the county in which the receivership order is recorded.

*(Added by renumbering Government Code Section 13975.2 by Stats. 2021, Ch. 124, Sec. 31. (AB 938) Effective January 1, 2022.)*

**1393.** (a) The superior court of the county in which is located the principal office of the plan in this state shall, upon the filing by the director of a verified application showing any of the conditions enumerated in Section 1386 to exist, issue its order vesting title to all of the assets of the plan, wherever situated, in the director or the director's successor in office, in his or her official capacity as such, and direct the director to take possession of all of its books, records, property, real and personal, and assets, and to conduct, as conservator, the business or portion of the business of the person as may seem appropriate to the director, and enjoining the person and its officers, directors, agents, servants, and employees from the transaction of its business or disposition of its property until the further order of the court.

(b) Whenever it appears to the director that irreparable loss and injury to the property and business of the plan or to the plan's enrollees has occurred or may occur unless the director acts immediately, the director, without notice and before applying to the court for any order, may take possession of the property, business, books, records, and accounts of the plan, and of the offices and premises occupied by it for the transaction of its business, and retain possession until returned to the plan or until further order of the director or subject to an order of the court. Any person having possession of and refusing to deliver any of the books, records, or assets of a plan against which a seizure order has been issued by the director, shall be guilty of a misdemeanor and punishable by a fine not exceeding ten thousand dollars (\$10,000) or imprisonment not exceeding one year, or both the fine and imprisonment. Whenever the director has taken possession of any plan pursuant to this subdivision, the owners, officers, and directors of the plan may apply to the superior court in the county in which the principal office of the plan is located, within 10 days after the taking, to enjoin further proceedings. The court, after citing the director to show cause why further proceedings should not be enjoined, and after a hearing and a determination of the facts upon the merits, may do any of the following:

(1) Dismiss the application after confirming the director's authority to take possession of all of the plan's books, records, property, real and personal, and assets, and to conduct, as conservator, the business or portion of the business as the director may deem appropriate, and enjoining the owners, officers, and directors, and their agents and employees, from the transaction of plan business or disposition of plan property until the further order of the court.

(2) Enjoin the director from further proceedings and direct the director to surrender the property and business to the plan.

(3) Make any further order as may be just.

(c) If any facts occur that would entitle the director to take possession of the property, business, and assets of the plan, the director may appoint a conservator over the plan and require any bond of the conservator as the director deems proper. The conservator, under the direction of the director, shall take possession of the property, business, and assets of the plan pending further disposition of its business. The conservator shall retain possession until the property, business, and assets of the plan are returned to the plan, or until further order of the director, except that the conservator shall be able to pay necessary costs of the ongoing operation without formal order of the director. Whenever the director has taken possession of any plan pursuant to subdivision (b), the director shall, within 10 days after the taking, apply to the superior court in the county in which the principal office of the plan is located for an order confirming the director's appointment of the conservator. The order may be given after a hearing upon notice that the court prescribes.

(d) (1) Subject to the other provisions of this section, a conservator, while in possession of the property, business, and assets of a plan, has the same powers and rights, and is subject to the same duties and obligations, as the director under the same circumstances, and during this time, the rights of a plan and of all persons with respect to the plan are the same as if the director had taken possession of the property, business, and assets of the plan, for the purpose of carrying out the conservatorship.

(2) Subject to the other provisions of this section, a conservator, while in possession of the property, business, and assets of a plan, shall have all of the rights, powers, and privileges of the plan, and its officers and directors, for the purpose of carrying out the conservatorship. All expenses of any conservatorship shall be paid from the assets of the plan, and shall be a lien on the plan which shall be prior to any other lien.

(3) No action at law or in equity may be maintained by any party against the director or a conservator by reason of their exercising or performing the privileges, powers, rights, duties, and obligations pursuant to the order, or with the approval, of the superior court.

(e) Upon appointing a conservator, the director shall cause to be made and completed, at the earliest possible date, an examination of the affairs of the plan as shall be necessary to inform the director as to the plan's financial condition.

(f) If the director becomes satisfied that it may be done safely and in the public interest, the director may terminate the conservatorship and permit the plan for which the conservator was appointed to resume its business under the direction of its board of directors, subject to any terms, conditions, restrictions, and limitations the director prescribes.

*(Amended by Stats. 1999, Ch. 525, Sec. 141. Effective January 1, 2000. Operative July 1, 2000, or sooner, by Sec. 214 of Ch. 525.)*

**1393.5.** (a) A person who violates Section 1349, or any person who directly or indirectly participates in the direction of the management or policies of the person in violation of Section 1349, including, but not limited to, any officer, director, partner, or other person occupying a principal management or supervisory position, shall be liable for civil penalties as follows:

(1) A sum of not more than five thousand dollars (\$5,000).

(2) A sum not exceeding one thousand dollars (\$1,000) for each subscriber under an individual or group plan contract that was entered into or renewed while the person was in violation of Section 1349.

(b) The penalty specified in paragraph (2) of subdivision (a) shall be imposed only if one or more of the following occurs:

(1) The solicitation of the entry into or renewal of such contract, or of any subscription or enrollment thereunder, included the use by the plan or a representative of the plan of any advertising, evidence of coverage, or disclosure form which was untrue, misleading, or deceptive.

(2) The contract is not in compliance with this chapter, or the rules adopted pursuant to this chapter.

(3) The plan does not have a financially sound operation and adequate provision against the risk of insolvency.

(4) The plan has operated in violation of the provisions of subdivision (a), (b), (c), (d), or (e) of Section 1367.

(5) The plan has not complied with the provisions of Section 1379.

(c) The civil penalty may be assessed and recovered only in a civil action. The cause of action may be brought in the name of the people of the State of California by the Attorney General or the director, as determined by the director.

(d) Commencing January 1, 2028, and every five years thereafter, the penalty amounts 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. 8. (SB 858) Effective January 1, 2023.)*

**1393.6.** For violations of Article 3.1 (commencing with Section 1357), Article 3.15 (commencing with Section 1357.50), Article 3.16 (commencing with Section 1357.500), and Article 3.17 (commencing with Section 1357.600), the director may, after appropriate notice and opportunity for hearing, by order levy administrative penalties as follows:

(a) Any person, solicitor, or solicitor firm, other than a health care service plan, who willfully violates any provision of this chapter, or who willfully violates any rule or order adopted or issued pursuant to this chapter, is liable for administrative penalties of not less than five hundred dollars (\$500) for each first violation, and of not less than two thousand dollars (\$2,000) and not more than five thousand dollars (\$5,000) for each subsequent violation.

(b) Any health care service plan that willfully violates any provision of this chapter, or that willfully violates any rule or order adopted or issued pursuant to this chapter, is liable for administrative penalties of not less than five thousand dollars (\$5,000) for each first violation, and of not less than ten thousand dollars (\$10,000) nor more than twenty thousand dollars (\$20,000) for each second violation, and of not less than thirty thousand dollars (\$30,000) and not more than two hundred thousand dollars (\$200,000) for each subsequent violation.

(c) The administrative penalties shall be paid to the Managed Care Administrative Fines and Penalties Fund and shall be used for the purposes specified in Section 1341.45.

(d) The administrative penalties available to the director pursuant to this section are not exclusive, and may be sought and employed in any combination with civil, criminal, and other administrative remedies deemed advisable by the director to enforce the provisions of this chapter.

(e) Commencing January 1, 2028, and every five years thereafter, the penalty amounts 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. 9. (SB 858) Effective January 1, 2023.)*

**1394.** The civil, criminal, and administrative remedies available to the director pursuant to this article are not exclusive, and may be sought and employed in any combination deemed advisable by the director to enforce the provisions of this chapter.

*(Amended by Stats. 1999, Ch. 525, Sec. 144. Effective January 1, 2000. Operative July 1, 2000, or sooner, by Sec. 214 of Ch. 525.)*

**1394.1.** Notwithstanding any other provision of law, the director may file a verified complaint for involuntary dissolution of a health care service plan on any one or more of the grounds specified in subdivision (b) of Section 1386. The complaint shall be filed in the superior court of the county where the principal executive office of the health care service plan is located or, if the principal executive office of the health care service plan is not located in this state, or the health care service plan has no such office, the County of Sacramento.

*(Amended by Stats. 1999, Ch. 525, Sec. 145. Effective January 1, 2000. Operative July 1, 2000, or sooner, by Sec. 214 of Ch. 525.)*

**1394.2.** Notwithstanding any other provision of law, in any involuntary dissolution of a health care service plan as provided for in Section 1394.1, or other insolvency proceeding involving a health care service plan, the following expenses and claims have priority in the following order:

(a) First, administrative expenses allowed by the superior court and any fees and charges assessed against the estate of the dissolved health care service plan in conjunction with the dissolution of the estate.

(b) Second, taxes due the State of California.

(c) Third, claims having preference by the laws of the United States and by the laws of this state.

(d) Fourth, claims of health care service plan subscribers and enrollees for reimbursement for services rendered by noncontracting providers. Upon proper showing, the superior court may make an order relieving subscribers and enrollees from liability or stay any proceeding to secure payment for any services rendered by a noncontracting provider upon payment, in whole or in part, of the claim or claims of those noncontracting providers.

(e) Fifth, claims of health care service plan group contract holders for reimbursement for services rendered by noncontracting providers to subscribers and enrollees under the group contract.

(f) Sixth, any and all claims, including all officers' and directors' claims for indemnity, arising against the estate of the dissolved health care service plan.

*(Added by Stats. 1985, Ch. 908, Sec. 6.)*

**1394.3.** Except as provided for in Section 1394.1, and 1394.2, the involuntary dissolution of a health care service plan shall be in accordance with either of the following:

(a) Chapter 18 (commencing with Section 1800) of Division 1 of Title 1 of the Corporations Code, if the plan is incorporated under the General Corporation Law.

(b) Chapter 15 (commencing with Section 8510) of Part 3 of Division 2 of Title 1 of the Corporations Code if the plan is incorporated under the Nonprofit Corporation Law.

*(Amended by Stats. 1999, Ch. 525, Sec. 146. Effective January 1, 2000. Operative July 1, 2000, or sooner, by Sec. 214 of Ch. 525.)*