

§ 1386. Suspension or revocation of license; Grounds for disciplinary action; Order to individual

(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.

(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.

HISTORY:

Added Stats 1975 ch 941 § 2, operative July 1, 1976. Amended Stats 1977 ch 818 § 15, effective September 16, 1977; Stats 1979 ch 1083 § 13; Stats 1980 ch 974 § 15; Stats 1986 ch 718 § 6; Stats 1996 ch 1094 § 1 (SB 1805); Stats 1998 ch 836 § 1 (SB 955); Stats 1999 ch 525 § 132 (AB 78), ch 526 § 11 (SB 19); Stats 2000 ch

135 § 91 (AB 2539), ch 1067 § 15 (SB 2094) (ch 1067 prevails); Stats 2002 ch 925 § 2 (AB 2907); Stats 2006 ch 622 § 1 (AB 2884), effective January 1, 2007; Stats 2008 ch 603 § 5 (AB 1203), effective January 1, 2009; Stats 2020 ch 12 § 4 (AB 80), effective June 29, 2020; Stats 2022 ch 985 § 4 (SB 858), effective January 1, 2023.