



CAHP IMPLEMENTATION GUIDELINE

SB 858 (Wiener) Chapter 985, Statutes of 2022

As a service to our members, the California Association of Health Plans produces guidelines designed to assist in the interpretation and implementation of new laws, and to promote full compliance with those laws. This document, however, is not intended to be authoritative. Any questions about official interpretations of the law should be directed to the appropriate state regulatory agency such as the Department of Managed Health Care or the Department of Health Care Services, as well as your legal counsel.

HEALTH CARE SERVICE PLANS: DISCIPLINE: CIVIL PENALTIES

BACKGROUND

SB 858 was introduced by Senator Scott Wiener (D-San Francisco) and sponsored by Health Access California. According to the author, this bill was intended to improve patient access to care and accountability by updating and increasing the penalties for health plan violations of California's consumer protections. The author pointed out that the fines levied by the Department of Managed Health Care (DMHC) have not been adjusted even for inflation since the late 1970s.

In its original iteration, SB 858 would have increased health penalties from \$2,500 per violation to a floor amount of \$25,000 per violation, which would then be adjusted annually. CAHP opposed SB 858 because it would raise health care costs and divert resources away from patient care by exponentially increasing civil penalties on health plans. Among other things, CAHP argued that current law already grants sufficient enforcement authority to DMHC, which has allowed itself considerable latitude in assessing significant fines and penalties.

SB 858 was amended several times. The final amendments to the bill, among other things, reduce the civil penalty amount to not more than \$25,000 (original version was not less than \$25,000). Under the final bill, the penalty amounts specified in the bill will be adjusted every five years based on the average rate of change in premium rates for the individual and small group markets, and weighted by enrollment, as specified.

These amendments, while adding some limitations to the original version of the bill, did not alleviate the concerns of the health plans. Nevertheless, the bill passed and was approved by Governor Newsom. Most Democrats in both houses voted in favor of the bill, although some voted No or abstained. Republicans voted No or abstained.

REQUIREMENTS

SB 858 amends Sections 1374.9, 1374.34, 1386, 1387, 1389.8, 1390, 1393.5, and 1393.6 of the Health and Safety Code, relating to health care service plans.

Specifically, SB 858 does the following:

- 1) Increases the base amount of the civil penalty from \$2,500 per violation to not more than \$25,000 per violation of the Knox-Keene Health Care Service Plan Act and Regulations.
- 2) Requires the Department of Managed Health Care (DMHC) Director, in assessing an administrative and civil penalty, to determine the appropriate amount for determining the penalty amount, based upon consideration of specified factors, including nature, scope, and gravity of the violation; good or bad faith of the plan; and, the plan's history of violations.
- 3) Doubles the minimum and maximum amounts of specified civil and administrative penalties, and, beginning January 1, 2028, and every five years thereafter, adjusts these civil and administrative penalties, as specified.
- 4) Authorizes the DMHC Director to impose a corrective action plan (CAP) to require future compliance, under certain circumstances. Requires the DMHC to monitor the health care service plan through medical surveys, financial examinations, or other means necessary to ensure timely compliance, if a health plan fails to comply with the CAP in a timely manner.

COMPLIANCE DATES

This law goes into effect starting January 1, 2028, and penalty amounts will continue to be adjusted every five years thereafter.

IMPLEMENTATION ISSUES

Applicability:

This law applies to all health care service plans and health insurers, except HSC section 1386 (b)(3) exempts specialized health care service plan contracts.

Implementation Issues:

This law permits the DMHC to assess penalties/impose disciplinary action for violations including, but not limited to:

- 1) Operational deviations from the manner described in basic organizational documents.
- 2) Failing to provide basic health care services as set forth in in the evidence of coverage.
- 3) Conduct amounting to fraud, dishonest dealing, or unfair competition.
- 4) Aiding, abetting, or permitting the commission of any illegal act.
- 5) Conduct that violates the Confidentiality of Medical Information Act.
- 6) Failing to comply with a corrective action plan in a timely manner.

Plans should ensure that all organizational, operational, and financial activities are sufficiently examined (and updated if needed) to comply with the parameters of this bill. Specifically, it would be beneficial for plans to inspect their formation documents, financial health, grievances and appeals processes, administrative and operational capabilities, staffing needs, health care service delivery/timely access compliance, and other functional aspects that may fall under DMHC scrutiny.

Plans should review provider contracts and member handbooks/Evidence of Coverage (EOC) to ensure that they are up to date and consistent with the list of basic health care services provided to enrollees.

Additionally, if plans fail to comply with a corrective action plan in a timely manner, the plans should prepare for the possibility of medical surveys, financial examinations, or other monitoring methods instituted by the DMHC.