

Senate Bill No. 858

CHAPTER 985

An act to amend 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.

[Approved by Governor September 30, 2022. Filed with
Secretary of State September 30, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 858, Wiener. Health care service plans: discipline: civil penalties.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care. Existing law authorizes the Director of the Department of Managed Health Care to take disciplinary measures, including the imposition of civil penalties, against a licensee when the director determines that the licensee has committed an act or omission constituting grounds for disciplinary action, as specified. Under existing law, a person who violates the act, or a rule or order adopted or issued under the act, is generally liable for a civil penalty not to exceed \$2,500 per violation. Existing law also includes various provisions that assess specific civil and administrative penalties for certain violations. Fines and penalties under the act are deposited into the Managed Care Administrative Fines and Penalties Fund, and used, upon appropriation by the Legislature, for designated purposes.

This bill would increase the base amount of the civil penalty from \$2,500 per violation to not more than \$25,000 per violation, and would authorize a lower, proportionate penalty for specialized dental and vision health care service plans. Under the bill, the civil penalty base amount would be adjusted annually commencing January 1, 2028, and every 5 years thereafter, as specified. The bill would double the minimum and maximum amounts of the civil and administrative penalties described above, and, commencing January 1, 2028, and every 5 years thereafter, adjust these civil and administrative penalties, as specified. The bill would authorize the director to impose a corrective action plan to require future compliance with the act, under certain circumstances. If a health care service plan fails to comply with the corrective action plan in a timely manner, the bill would require the department to monitor the health care service plan through medical surveys, financial examinations, or other means necessary to ensure timely compliance, and would specify that failure to timely comply with a corrective action plan is grounds for disciplinary action.

The bill would require the director, when assessing administrative and civil penalties against a health care service plan, to determine the appropriate

amount of the penalty for each violation, based upon consideration of specified factors, such as the nature, scope, and gravity of the violation, whether the violation is an isolated incident, and the amount of the penalty necessary to deter similar violations in the future.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(1) Some of the penalty amounts the Department of Managed Health Care is authorized to impose have not been altered since the enactment of the Knox-Keene Act in 1975. In 1975, the price of gasoline was \$0.59 a gallon and a pound of chicken also cost \$0.59.

(2) Other provisions of the Knox-Keene Act that include penalty amounts have not been updated since 1999 or 2000. Since then, health plan premiums in California for employer-sponsored coverage have quadrupled from one hundred sixty three dollars (\$163) per month in 2000 to six hundred sixty-one dollars (\$661) per month in 2020, according to the California Employer Health Benefits Survey published by the California Health Care Foundation in August 2021.

(3) It is, therefore, the intent of the Legislature in enacting this act to provide the Department of Managed Health Care with additional authority to levy penalties and impose corrective action plans, while updating penalty amounts.

SEC. 2. Section 1374.9 of the Health and Safety Code is amended to read:

1374.9. For violations of Section 1374.7, the director may, after appropriate notice and opportunity for hearing, by order, levy administrative penalties as follows:

(a) Any health care service plan that violates Section 1374.7, or that violates any rule or order adopted or issued pursuant to this section, 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.

(b) 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.

(c) 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.

(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.

SEC. 3. Section 1374.34 of the Health and Safety Code is amended to read:

1374.34. (a) Upon receiving the decision adopted by the director pursuant to Section 1374.33 that a disputed health care service is medically necessary, the plan shall promptly implement the decision. In the case of reimbursement for services already rendered, the plan shall reimburse the provider or enrollee, whichever applies, within five working days. In the case of services not yet rendered, the plan shall authorize the services within five working days of receipt of the written decision from the director, or sooner if appropriate for the nature of the enrollee's medical condition, and shall inform the enrollee and provider of the authorization in accordance with the requirements of paragraph (3) of subdivision (h) of Section 1367.01.

(b) A plan shall not engage in any conduct that has the effect of prolonging the independent review process. The engaging in that conduct or the failure of the plan to promptly implement the decision is a violation of this chapter and, in addition to any other fines, penalties, and other remedies available to the director under this chapter, the plan shall be subject to an administrative penalty of not less than ten thousand dollars (\$10,000) for each day that the decision is not implemented. 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.

(c) The director shall require the plan to promptly reimburse the enrollee for any reasonable costs associated with those services when the director finds that the disputed health care services were a covered benefit under the terms and conditions of the health care service plan contract, and the services are found by the independent medical review organization to have been medically necessary pursuant to Section 1374.33, and either the enrollee's decision to secure the services outside of the plan provider network was reasonable under the emergency or urgent medical circumstances, or the health care service plan contract does not require or provide prior authorization before the health care services are provided to the enrollee.

(d) In addition to requiring plan compliance regarding subdivisions (a), (b), and (c) the director shall review individual cases submitted for independent medical review to determine whether any enforcement actions, including penalties, may be appropriate. In particular, where substantial harm, as defined in Section 3428 of the Civil Code, to an enrollee has already occurred because of the decision of a plan, or one of its contracting providers, to delay, deny, or modify covered health care services that an independent medical review determines to be medically necessary pursuant to Section 1374.33, the director shall impose penalties.

(e) Pursuant to Section 1368.04, the director shall perform an annual audit of independent medical review cases for the dual purposes of education and the opportunity to determine if any investigative or enforcement actions should be undertaken by the department, particularly if a plan repeatedly fails to act promptly and reasonably to resolve grievances associated with a delay, denial, or modification of medically necessary health care services

when the obligation of the plan to provide those health care services to enrollees or subscribers is reasonably clear.

(f) A plan's provision of prescription drugs to a Medi-Cal beneficiary pursuant to paragraph (5) of subdivision (b) of Section 14105.33 of the Welfare and Institutions Code and in accordance with the State Department of Health Care Services coverage policies shall not be a ground for an enforcement action. Nothing in this article is intended to limit a plan's responsibility to provide medically necessary health care services pursuant to this chapter.

(g) 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.

SEC. 4. Section 1386 of the Health and Safety Code is amended to read:

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.

(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.

SEC. 5. Section 1387 of the Health and Safety Code is amended to read:

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.

SEC. 6. Section 1389.8 of the Health and Safety Code is amended to read:

1389.8. (a) Notwithstanding any other provision of law, an agent, broker, solicitor, solicitor firm, or representative who assists an applicant in submitting an application to a health care service plan has the duty to assist the applicant in providing answers to health questions accurately and completely.

(b) An agent, broker, solicitor, solicitor firm, or representative who assists an applicant in submitting an application to a health care service plan shall attest on the written application to both of the following:

(1) That to the best of their knowledge, the information on the application is complete and accurate.

(2) That they explained to the applicant, in easy-to-understand language, the risk to the applicant of providing inaccurate information and that the applicant understood the explanation.

(c) If, in an attestation required by subdivision (b), a declarant willfully states as true any material fact the declarant knows to be false, that person shall, in addition to any applicable penalties or remedies available under current law, be subject to a civil penalty of up to twenty thousand dollars

(\$20,000). Any public prosecutor may bring a civil action to impose that civil penalty. These penalties shall be paid to the Managed Care Fund.

(d) A health care service plan application shall include a statement advising declarants of the civil penalty authorized under this section.

(e) 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.

SEC. 7. Section 1390 of the Health and Safety Code is amended to read:

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.

SEC. 8. Section 1393.5 of the Health and Safety Code is amended to read:

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.

SEC. 9. Section 1393.6 of the Health and Safety Code is amended to read:

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.