Holding Health Plans Accountable

SB 858 (Wiener)

The 27 million Californians enrolled in health plans regulated by the Department of Managed Health Care (DMHC) benefit from some of the strongest consumer protections in the nation. These protections include requirements for access to basic health care services, timely access to care, adequate network standards, language access, Independent Medical Review, and a process for resolving grievances.

However, these standards of quality, access, and coverage only work if the health plans abide by these rules, and face real consequences if they don't. DMHC's patient protections rely on a strong framework to hold health plans accountable for consumer grievances and violations. When health plans don't follow the law, the DMHC investigates and is able to impose corrective action plans, along with civil or administrative penalties.

SB 858 will ensure health plans can be held accountable for the strong consumer protections Californians rely upon by increasing penalty amounts, updating how penalties are determined, and increasing penalties as health plan premiums increase.

Standards Have Increased, But Accountability Has Stagnated

Though California's consumer standards have been updated many times, the penalties have rarely (and in some cases never) been updated. The basic civil fine maximum of $2,500 has not been updated since 1975. Many administrative penalty amounts have remained fixed since they were established decades ago. The guidance DMHC uses to determine penalty amounts has also remained unchanged, with no updates to account for increased financial sophistication of health plans.

Most DMHC fines are relatively small, especially given the health plan's finances. Even for the biggest, headline-making penalties in recent years, the fines don't necessarily match the severity and breadth of the violations. Just this year, L.A. Care was fined a historic $35 million by DMHC for failure to appropriately handle grievances and for a severe backlog of authorization requests for services over a five year span.[i] However, with over 67,000 grievances and over 9,000 requests for authorization, this seemingly large fine amounts to only a few hundred dollars per instance—**essentially less than a speeding ticket for delaying or denying care to a patient**. Meanwhile, the plan reports a tangible net equity of over $1 billion, an amount $923 million over that which is required by law.[i]

Other significant penalties include a $1.2 million fine against Anthem Blue Cross in 2021 for failing to provide medically necessary gender affirming care for two transgender individuals, and a $4 million fine against Kaiser for egregious failures to provide basic behavioral health care in a timely manner.[ii,iii] Yet these fines are merely a drop in the bucket compared to their overall operating costs.

When penalties are too low, health plans may feel fines are simply another cost of doing business. Over time, it has become more cost-effective to pay penalties as violations are caught rather than to change and improve their service delivery. Taken in the context of the severity of the violations, the actual impact on the plans, and the net financial cost to the plan of continuing to engage in the bad behavior as opposed to providing necessary care, even "large" fines may not be enough to get plans to change their practices.

The Solution: Increase DMHC Penalty Amounts and Update Methodology

SB 858 (Wiener) will increase most civil penalties from a *maximum* of $2,500 to a *minimum* of $25,000 per enrollee per violation. This reflects the general increase in inflation, which understates the increase in premiums and health care costs. Penalties with specific amounts in statute, most of which were enacted in 1999 or 2000 and have remained unchanged since, will be multiplied by four starting in 2024. This increase reflects the increase in plan premiums in California for employer coverage since 2000.[iv] Penalties will also increase along with plan premiums, to ensure accountability keeps pace with consumer costs.

SB 858 also ensures that additional relevant factors may be considered for purposes of determining penalties, including the full financial status of the health plan in violation, and the context of how much the plan saved by denying appropriate care.

When Accountability Lags, Consumers Suffer

Violations of consumer protections have led to egregious suffering and even death for too many Californians. The L.A. Times story which uncovered the violations of L.A. Care, along with the DMHC's findings, detailed numerous stories of severely ill patients facing significant delays in care—cancer patients waiting months for biopsies, and delays to see specialists so extensive that some patients didn't survive the wait.[v]

SB 858 will help keep plans accountable by bringing accountability measures up to date with the strong consumer protections that are already in place.

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[i] DMHC L.A. Care Accusation, March 2022.
[ii] DMHC. Blue Cross of California Partnership Plan Fined $1.2M for Failing to Authorize Medically Necessary Services. October 2020.
[iii] L.A. Times. "California fines Kaiser $4 million over access to mental care." June 2013.
[iv] Slide 16: 2021 Edition – California Employer Health Benefits - California Health Care Foundation (chcf.org)
[v] L.A. Times. "L.A.'s poorest patients endure long delays to see medical specialists. Some die waiting." September 2020.