

No. **2023-7895**

**Official Order  
of the  
Texas Commissioner of Insurance**

**Date: 4/19/2023**

**Subject Considered:**

Wellfleet Insurance Company  
5814 Reed Road  
Fort Wayne, Indiana 46835-3568

Consent Order  
TDI Enforcement File No. 30206

**General remarks and official action taken:**

This is a consent order with Wellfleet Insurance Company (Wellfleet). The Texas Department of Insurance conducted a quality of care examination and found Wellfleet violated several provisions of the Texas Insurance Code and Title 28 of the Texas Administrative Code. Wellfleet has agreed to pay a \$125,000 administrative penalty for these violations.

**Waiver**

Wellfleet acknowledges that the Texas Insurance Code and other applicable law provide certain rights. Wellfleet waives all of these rights, and any other applicable procedural rights, in consideration of the entry of this consent order.

**Findings of Fact**

1. Wellfleet holds an authorization to act as a life, accident, and health insurance company in Texas issued by the department.
2. Wellfleet is affiliated with Berkshire Hathaway Inc.

## 2023-7895

Commissioner's Order

Wellfleet Insurance Company

Page 2 of 10

3. Wellfleet delegated duties to Wellfleet Group, LLC, its third-party administrator, to process and adjudicate claims.
4. Wellfleet delegated utilization review duties (URA) to the following non-affiliated companies: Cigna Behavioral Health, Inc.; Cigna Health Management, Inc.; Express Scripts Inc.; Hines and Associates, Inc.; and MedImpact Healthcare Systems, Inc. Cigna Health Management, Inc. contracted with the following companies: American Specialty Health Group, Inc.; CareCentrix, Inc.; and eviCore Healthcare.
5. Wellfleet also delegated duties to the following non-affiliated, third-party administrators to process and adjudicate pharmacy claims: Express Scripts, Inc. and Kroger Prescriptions Plans, Inc. (KPP).
6. Wellfleet no longer contracts duties to KPP.
7. Wellfleet delegated duties to the following non-affiliated companies to resolve oral and written complaints, provider networks, and to credential and recredential participating health care providers: Cigna Health and Life Insurance Company and MultiPlan, Inc.
8. The department conducted a quality of care examination for the period of January 1, 2018, through December 30, 2020. The examination reviewed quality assessment; utilization review; claims; complaints; sales, advertising and marketing; enrollee identification cards; health care provider network delegations; directories and notifications; and health care provider credentialing related to Wellfleet's preferred provider benefit plan (PPO) health line of business.
9. The purpose of the examination was to verify compliance with the Texas Insurance Code and Title 28 of the Texas Administrative Code.
10. During the exam, the department found violations of the Texas Insurance Code and the Texas Administrative Code in the samples of policies and claims reviewed.

### Utilization Review Requests

11. The department reviewed 172 utilization review requests for statutory compliance.

## 2023-7895

Commissioner's Order

Wellfleet Insurance Company

Page 3 of 10

12. In two percent (4 of 172) of utilization review requests reviewed, the notice of determination made by Wellfleet's URA was sent later than the second working day after the date of the request.
13. Wellfleet represents that the root cause of late determination notices was the unanticipated case volume volatility during the COVID pandemic. For example, three of the four utilization review requests reviewed during the examination from Cigna/eviCore were impacted by the COVID pandemic period between January 1, 2020, and December 31, 2020.

### Initial Adverse Determinations

14. The department reviewed 35 initial adverse determinations for statutory compliance.
15. In three percent (1 of 35) of initial adverse determinations reviewed, Wellfleet's URA, ESI, did not refer the request to an appropriate physician, dentist, or health care provider to determine medical necessity. Wellfleet represented that, this one case was the responsibility of ESI and that the failure to refer was due to human error. Wellfleet and ESI have subsequently implemented procedures to correct future determinations including a requirement that a medical director must review all denials before they are finalized.
16. In 69 percent (24 of 35) of initial adverse determinations reviewed, Wellfleet's URA issued the adverse determinations without affording the provider of record a reasonable opportunity to discuss treatment. There were three URAs examined in connection with this finding: KPP, ESI, and CIGNA. Wellfleet has subsequently implemented corrective actions with ESI and CIGNA. KPP is no longer contracted with Wellfleet.
17. In 26 percent (9 of 35) of initial adverse determinations reviewed, Wellfleet's URA issued adverse determinations later than three calendar days from receipt of the request.
18. In 20 percent (7 of 35) of initial adverse determinations reviewed, Wellfleet's URA, KPP, did not include the professional specialty of the physician who made the determination in the adverse determination letter. Wellfleet represents that the root cause for this issue was due to the COVID pandemic's negative impact on staffing levels and turnaround times. For example, five of the seven cases were

## 2023-7895

impacted by the COVID pandemic period between January 1, 2020, and December 31, 2020.

19. In six percent (2 of 35) of initial adverse determinations reviewed, Wellfleet's URA, CIGNA, did not include the description of procedures for the URA's complaint system, procedures for the appeal process, or a form to request a review by an independent review organization in the adverse determination notice. Wellfleet represents that the root cause was due to the COVID pandemic's negative impact on staffing levels. One of the two cases was in the COVID pandemic period between January 1, 2020, and December 31, 2020.

### Appeal Adverse Determinations

20. The department reviewed one appeal adverse determination for statutory compliance.
21. In 100 percent (1 of 1) of appeal adverse determinations reviewed, Wellfleet's URA, KPP, did not afford the provider of record a reasonable opportunity to discuss the plan of treatment for the enrollee with a physician during normal business hours, no less than one working day prior to issuing the appeal adverse determination.
22. In 100 percent (1 of 1) of appeal adverse determinations reviewed, Wellfleet's URA, KPP, did not include the professional specialty of the physician who made the determination in the appeal resolution letter.

### Claims

23. The department reviewed 50 claims received and processed in 2020 for statutory compliance.
24. In 30 percent (3 of 10) of electronic prescription claims reviewed, Wellfleet's pharmacy benefit manager, ESI, paid the claims later than the 18th day after the date on which the claims were adjudicated. Wellfleet represented that the late payment was attributed to the COVID pandemic's negative impact on staffing levels and turnaround times. Two of the four examined cases were in the COVID pandemic period between January 1, 2020 and December 31, 2020.
25. In five percent (2 of 40) of medical claims reviewed, Wellfleet misrepresented benefits provided by the policy.

## 2023-7895

Commissioner's Order  
Wellfleet Insurance Company  
Page 5 of 10

26. In 13 percent (5 of 40) of medical claims reviewed, Wellfleet did not indicate a payment was made to a non-network physician in the explanation of benefits sent to the enrollee.
27. Additionally, Wellfleet did not accurately report to the department on a quarterly basis the number of claims paid within statutory timeframes during the scope of the examination.

### Complaints

28. The department reviewed 26 complaints Wellfleet received and responded to in 2019 and 2020 for statutory compliance.
29. In eight percent (2 of 26) of complaints reviewed, Wellfleet paid the preferred provider claims late without paying applicable prompt payment penalties and interest.

### Provider Directories

30. The department reviewed health care provider lists and directories to determine statutory compliance.
31. Wellfleet's delegate did not contain a list of facility-based physicians for each facility within its online provider directory.
32. Wellfleet's delegate did not maintain a log of Health Care Provider Directory Monthly Updates and Corrections.
33. In eight percent (144 of 1,696) of provider lists and directories reviewed, Wellfleet's delegate did not make the corrections by the seventh day after receiving a report, notice, or complaint of inaccurate information in provider directories in the scope of the examination.

### Health Care Provider Credentialing

34. The department reviewed Wellfleet's delegate credentialing accreditation with the National Committee of Quality Assurance for 2018, 2019, and 2020 for statutory compliance.

# 2023-7895

Commissioner's Order  
Wellfleet Insurance Company  
Page 6 of 10

35. In seven percent (4,919 of 67,592) of health care provider credentialing reviewed, Wellfleet's delegate did not recredential physicians and/or providers within 36 months of the previous credentialing decision.

## Subsequent Events and Other Disclosures

36. On January 31, 2022, Wellfleet provided a claims impact report to the department, and it is currently in the process of paying penalties and interest for 142 claims identified during the scope of the examination. Wellfleet also sent revised pharmacy quarterly reports to the department.
37. Wellfleet reprocessed the medical claims that were processed using an incorrect ineligible remark code, which resulted in incorrect patient responsibilities. Wellfleet contacted the providers to determine if there was any impact to the members. Wellfleet is committed to reimbursing the members for any unnecessary payments made to the providers if applicable.

## **Conclusions of Law**

1. The commissioner has jurisdiction over this matter under TEX. INS. CODE §§ 82.051–82.055, 84.021–84.044, 543, 847, 1301, 1451, 1456, 4001.201, and 4201; 28 TEX. ADMIN. CODE §§ 3.3705, 3.3706, 19.1703, 19.1705, 19.1709-19.1711, 19.1718, 21.2802, 21.2810, 21.2815, and 21.2821; and TEX. GOV'T CODE §§ 2001.051-2001.178.
2. The commissioner has the authority to dispose informally of this matter as set forth in TEX. GOV'T CODE § 2001.056, TEX. INS. CODE §§ 36.104 and 82.055, and 28 TEX. ADMIN. CODE § 1.47.
3. Wellfleet has knowingly and voluntarily waived all procedural rights to which it may have been entitled regarding the entry of this order, including, but not limited to, issuance and service of notice of intention to institute disciplinary action, notice of hearing, a public hearing, a proposal for decision, rehearing by the commissioner, and judicial review.
4. Wellfleet violated TEX. INS. CODE § 4201.302 by failing to send the notice of determination not later than the second working day after the date of the request for utilization review and after receiving all information necessary to complete the review.

## 2023-7895

Commissioner's Order

Wellfleet Insurance Company

Page 7 of 10

5. Wellfleet violated TEX. INS. CODE § 4201.153(d) and 28 TEX. ADMIN. CODE § 19.1705(d) by failing to refer the requested treatment to an appropriate physician, dentist, or health care provider to determine medical necessity.
6. Wellfleet violated TEX. INS. CODE § 4201.206 and 28 TEX. ADMIN. CODE § 19.1703(b)(26)(A) by failing to afford the provider of record a reasonable opportunity to discuss treatment prior to issuing the adverse determination.
7. Wellfleet violated TEX. INS. CODE § 4201.206 and 28 TEX. ADMIN. CODE § 19.1703(b)(26)(A) by failing to afford the provider of record a reasonable opportunity to discuss treatment no less than one working day prior to issuing the adverse determination.
8. Wellfleet violated TEX. INS. CODE § 4201.206 and 28 TEX. ADMIN. CODE §§ 19.1703(b)(26)(B) and 19.1710 by failing to afford the provider of record a reasonable opportunity to discuss treatment within five working days prior to issuing the adverse determination.
9. Wellfleet violated TEX. INS. CODE § 1301.135(c) and 28 TEX. ADMIN. CODE § 19.1718(d)(1) by failing to review and issue a determination indicating whether the proposed medical care or health services requested are preauthorized not later than the third calendar day after the date the request is received by the insurer.
10. Wellfleet violated 28 TEX. ADMIN. CODE § 19.1709(b)(4) by failing to include the professional specialty of the physician, doctor, or other health care provider who made the adverse determination.
11. Wellfleet violated TEX. INS. CODE § 4201.303(a)(4) and 28 TEX. ADMIN. CODE § 19.1709(c)(5)-(7) by failing to include the description of procedures for Wellfleet's complaint system, procedures for the appeal process, and a form to request a review by an independent review organization.
12. Wellfleet violated TEX. INS. CODE § 4201.206 and 28 TEX. ADMIN. CODE § 19.1711 by failing to afford the provider of record a reasonable opportunity to discuss the plan of treatment for the enrollee with a physician during normal business hours, prior to issuing the appeal adverse determination.

## 2023-7895

Commissioner's Order

Wellfleet Insurance Company

Page 8 of 10

13. Wellfleet violated TEX. INS. CODE § 4201.359(b)(2) and 28 TEX. ADMIN. CODE § 19.1711(a)(8)(D) by failing to include the professional specialty of the physician who made the determination in the appeal resolution letter.
14. Wellfleet violated TEX. INS. CODE § 1301.104(a) and 28 TEX. ADMIN. CODE § 21.2802(33)(D) by paying claims later than the 18th day after the date on which the claims were adjudicated.
15. Wellfleet violated 28 TEX. ADMIN. CODE § 21.2821(c) by failing to accurately report to the department on a quarterly basis the number of claims paid within statutory timeframes during the scope of the examination.
16. Wellfleet violated TEX. INS. CODE § 543.001(b)(1)(B) by mispresenting the benefits provided by the policy.
17. Wellfleet violated TEX. INS. CODE § 1456.003(d) by failing to indicate a payment was made to a non-network physician within the explanation of benefits sent to the enrollee.
18. Wellfleet violated 28 TEX. ADMIN. CODE § 21.2810 by failing to provide a claim paid report that tracked the actual paid date of the claim.
19. Wellfleet violated TEX. INS. CODE § 843.2015 and 28 TEX. ADMIN. CODE §§ 11.1607(b) and 11.1600(b)(12)-(13) by failing to maintain an accurate written or electronic list of contracted providers participating in Wellfleet's approved delivery network.
20. Wellfleet violated TEX. INS. CODE § 1451.505(d) by failing to maintain accurate written and electronic lists of contracted providers by conducting an ongoing review of its directory, to correct or update the information as necessary, but no less than once a month.
21. Wellfleet violated TEX. INS. CODE § 1451.505(e) by failing to correct its directory by the seventh day after the date the report, notice, or complaint was received.
22. Wellfleet failed to adhere to the National Committee of Quality Assurance Credentialing Standards in violation of 28 TEX. ADMIN. CODE § 3.3706(c).

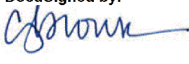


# 2023-7895

Commissioner's Order  
Wellfleet Insurance Company  
Page 9 of 10

## Order

It is ordered that Wellfleet Insurance Company must pay an administrative penalty of \$125,000 within 30 days from the date of this order. The administrative penalty must be paid as instructed in the invoice, which the department will send after entry of this order.

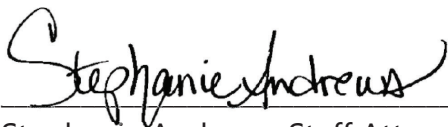
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Cassie Brown  
Commissioner of Insurance

Recommended and reviewed by:



Leah Gillum, Deputy Commissioner  
Fraud and Enforcement Division



Stephanie Andrews, Staff Attorney  
Enforcement

**Affidavit**

STATE OF MA §  
§  
COUNTY OF Hampden §

Before me, the undersigned authority, personally appeared Andrew DiGiorgio, who being by me duly sworn, deposed as follows:

"My name is Andrew D. Giorgis. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

I hold the office of President and am the authorized representative of Wellfleet Insurance Company. I am duly authorized by said organization to execute this statement.

Wellfleet Insurance Company has knowingly and voluntarily entered into the foregoing consent order and agrees with and consents to the issuance and service of the same by the commissioner of insurance of the State of Texas."

  
Affiant

SWORN TO AND SUBSCRIBED before me on March 29, 2023.

(NOTARY SEAL)

Viorica V. Bragagiu  
Signature of Notary Public

Viorica V. Bragagiu  
Printed Name of Notary Public



VIORICA V. BRAGAGIU  
NOTARY PUBLIC  
Commonwealth of Massachusetts  
My Commission Expires  
July 25, 2025