

No. **2018-5653**

**OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF INSURANCE**

Date: Oct. 08, 2018

Subject Considered:

HUMANA INSURANCE COMPANY
PO Box 740036
Louisville, Kentucky 40201-7436

CONSENT ORDER
TDI ENFORCEMENT FILE NO. 16923

General remarks and official action taken:

The subject of this order is whether disciplinary action should be taken against Humana Insurance Company (Humana).

WAIVER

Humana acknowledges that the Texas Insurance Code and other applicable law provide certain rights. Humana waives all of these rights and any other procedural rights in consideration of the entry of this consent order. Pursuant to TEX. INS. CODE § 82.055(b), Humana agrees to this consent order with the express reservation that it does not admit to a violation of the code or of a rule and that the existence of a violation is in dispute.

FINDINGS OF FACT

1. Humana holds a certificate of authority issued by the Texas Department of Insurance (department) to act as a life, accident and health company.
2. Humana markets and sells different group preferred provider (PPO) plans in Texas. Together with Humana Health Plan of Texas Inc., Humana also markets and sells different group national point of service (NPOS) plans in Texas.
3. For the 2018 plan year, Humana's PPO plans cover approximately 20,500 and Humana's NPOS plans cover approximately 145,000 Texas consumers, as of July 31, 2018.
4. Humana's PPO and NPOS plans, while offering different coverages to insureds, use one preferred provider network throughout the state, Humana PPO ChoiceCare.

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PPO Network Adequacy Requirements

5. Texas law requires Humana “ensure that both preferred provider benefits and basic level benefits are reasonably available to all insureds within a designated service area.” TEX. INS. CODE § 1301.005(a). “Service area” means a geographic or contract or policy defined area in which a network of preferred providers is offered and available. *See* TEX. INS. CODE § 1301.001(10).
6. Humana must contract with enough providers to fulfill its obligation to provide health care services as required under its insurance policies in a manner ensuring availability of and accessibility to adequate personnel, specialty care, and facilities, pursuant to TEX. INS. CODE § 1301.006(a). The department has adopted network adequacy rules, pursuant to TEX. INS. CODE § 1301.0055. These rules are found in 28 TEX. ADMIN. CODE §§ 3.3701 to 3.3711.
7. Humana must have adequate provider networks to deliver basic health services and other benefits promised by its insurance policies. Texas law has a sizable list of PPO network adequacy standards, as set out in 28 TEX. ADMIN. CODE §§ 3.3701 to 3.3711. Humana’s provider networks, among other requirements, must:
 - a. be sufficient to furnish services covered by the insurance contract in a service area;
 - b. include an adequate number of preferred providers available and accessible 24 hours a day, seven days a week, within a service area; and
 - c. provide for preferred benefit services within certain mileage limits of no more than 75 miles from any point in a service area. *See* 28 TEX. ADMIN. CODE § 3.3704(f).
8. Humana has a duty to monitor its compliance with 28 TEX. ADMIN. CODE § 3.3704(f) “on an ongoing basis, taking any corrective action as required to ensure that the network is adequate.” 28 TEX. ADMIN. CODE § 3.3704(g).
9. Humana is required to provide notice no later than two business days of any substantial decrease in the availability of facility-based providers at any one facility, specifically reduction of 75 percent or more of the contracted facility-based anesthesiology groups for that facility. This notice must be displayed prominently on Humana’s website. 28 TEX. ADMIN. CODE § 3.3705(n).
10. If a network’s status changes so that the plan no longer complies with the network adequacy standards in 28 TEX. ADMIN. CODE § 3.3704, Humana must establish and file with the department a “local market access plan” within 30 days of the date on which the network becomes noncompliant. 28 TEX. ADMIN. CODE § 3.3707(i).

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11. An access plan must include procedures Humana will use to assist insureds in getting medically necessary services, limiting the likelihood of balance billing, and procedures for handling out-of-network claims. *See* 28 TEX. ADMIN. CODE § 3.3707(i).
12. Additionally, Humana must apply for a waiver from network adequacy requirements within 90 days of its network becoming noncompliant. The Commissioner may grant the waiver if the insurer demonstrates that necessary providers or physicians are “not available to contract or have refused to contract with the insurer on any terms or on terms that are reasonable.” 28 TEX. ADMIN. CODE § 3.3707.
13. Humana is required to file a network adequacy report with the department before April 1 of each year and must specify that its “preferred provider service delivery network supporting each plan is adequate under the standards in § 3.3704.” 28 TEX. ADMIN. CODE § 3.3709.

Facility-Based Anesthesia Contracts Terminated

14. At the beginning of 2018, Humana’s PPO network had contracts with an adequate network of facility-based anesthesia providers.
15. Beginning in January 2018 and continuing through at least June 2018, a total of four Humana PPO network contracts for facility-based anesthesia services were terminated, two by Humana and two by the providers themselves. Each of these contracts has since been re-contracted. These contract terminations resulted in a significant decrease in the contracted facility-based anesthesiology groups.
16. The terminations left no in-network facility-based anesthesiologists in 23 facilities while 47 other facilities remained with in-network facility-based anesthesiology coverage. The chart below depicts the status of the facilities in certain urban areas:

City/County	Facilities with no in-network facility-based anesthesia providers after contract termination	Facilities with in-network facility-based anesthesia providers after contract termination	Time period
Austin/Travis	5	7	May – September 2018
Dallas/Dallas & Tarrant	6	13	May – September 2018
Houston/Harris	8	13	April – September 2018
San Antonio/Bexar	4	14	February – August 2018

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17. The department was first made aware of Humana's contract terminations on August 7, 2018. A surgical anesthesiology provider called the department to discuss the lack of in-network facility-based Humana PPO anesthesia providers in Austin.

Failure to Disclose

18. When each anesthesia contract in major Texas cities was terminated, Humana's network was inadequate because it did not have "reasonably available" facility-based anesthesia network providers.
19. Humana did not adequately disclose this fact to its insureds.
20. Humana posted notices of the decrease in facility-based anesthesiologists in one instance 12 days after the effective date and in the other two 41 days after the effective date. These notices however were posted to the portion of Humana's website disclosing other legal notices. These notices were posted 10 and 39 days after the two business days as required.
21. None of Humana's notices were posted prominently on its website as required by law under 28 TEX. ADMIN. CODE § 3.3705(n).
22. Many Humana enrollees received facility-based anesthesia services at Humana's in-network facilities from out-of-network anesthesiologists. While Humana has provided data indicating that it processed claims in accordance with in-network benefits as set forth in the enrollees' policy, some enrollees received balance bills. When Humana enrollees contacted Humana about being balance billed by the out-of-network anesthesiologists, Humana directed its enrollees to pursue mediation under TEX. INS. CODE Ch. 1467 and did not try to assist consumers in avoiding balance bills.
23. For claims from the period January 1, 2018, through the date the department certifies its facility-based anesthesiology network as adequate, Humana has agreed to hold enrollees harmless and ensure that all out-of-network facility-based anesthesiologist claims in the affected areas are reprocessed and Humana enrollees are only responsible for any applicable in-network coinsurance, copays and deductibles as set forth in the enrollee's policy. These impacted enrollees will not be referred to mediation.
24. Humana has further agreed to send reprocessed explanation of benefits and provider payment statements to all affected enrollees and providers. Humana has agreed to provide to the department, no later than the 15th of each month, a complete listing of all claims information necessary for the department to determine if claims have been paid or reprocessed.

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Statements to the Department

25. Humana filed its annual network adequacy report on March 31, 2018. The report did not include an access plan to address the then-inadequate facility-based anesthesia network in San Antonio.
26. Humana represented to the department that its information in its annual report was assembled 60 days prior to filing the report.
27. Humana failed to file an access plan within 30 days of a change in its network that caused it to no longer meet the requirements of 28 TEX. ADMIN. CODE § 3.3704(j).
28. After discussions with the department, on August 30, 2018, Humana committed to filing an access plan and to the claims payment and reprocessing steps described in Findings of Fact 23-24.
29. Humana filed an access plan for anesthesia services on August 31, 2018. Humana's facility-based anesthesiology network with an access plan was certified adequate on September 28, 2018.

CONCLUSIONS OF LAW

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE Chs. 82, 84, 801, and 1301; 28 TEX. ADMIN. CODE §§ 3.3701-3.3708; and TEX. GOV'T CODE §§ 2001.051-2001.178.
2. The commissioner has the authority to dispose of this case informally pursuant to TEX. GOV'T CODE § 2001.056, TEX. INS. CODE §§ 36.104 and 82.055, and 28 TEX. ADMIN. CODE § 1.47.
3. Humana 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. Humana did not maintain an adequate network for facility-based anesthesiologists, in violation of TEX. INS. CODE § 1301.005 and 28 TEX. ADMIN. CODE § 3.3704(f).
5. Humana failed to adequately notify its insureds of a substantial decrease in the availability of certain facility-based anesthesiologists, in violation of 28 TEX. ADMIN. CODE § 3.3705(n).

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6. Humana failed to timely file or establish an access plan when its facility-based anesthesiology network status failed to comply with network adequacy standards, in violation of 28 TEX. ADMIN. CODE § 3.3707(i).

It is ordered that Humana Insurance Company fully comply with Findings of Fact 23-24.

Humana Insurance Company must send all submissions regarding claims information as set out in Finding of Fact 24 by email to EnforcementReports@tdi.texas.gov.

It is ordered that Humana Insurance Company must pay an administrative penalty of \$350,000.00 within 30 days from the date of this order. The administrative penalty must be paid by company check, cashier's check, or money order made payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: Enforcement Section, Division 60851, MC 9999, P.O. Box 149104, Austin, Texas 78714-9104.

/s/ Kent C. Sullivan

Kent C. Sullivan

Commissioner of Insurance

APPROVED AS TO FORM AND CONTENT:

/s/ Leah Gillum

Leah Gillum

Associate Commissioner, Enforcement Section

Texas Department of Insurance

Affidavit

STATE OF KENTUCKY

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COUNTY OF JEFFERSON

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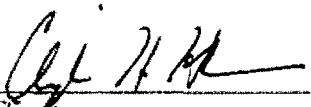
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Before me, the undersigned authority, personally appeared the affiant, who was duly sworn by me and deposed as follows:

"My name is Christopher H. Hunter. 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 Segment President, Group Business and am the representative of Humana Insurance Company. I am duly authorized by said organization to execute this statement.

Humana Insurance Company knowingly and voluntarily enters into this consent order, and consents to the issuance and service of the consent order by the commissioner of insurance of the state of Texas."




Affiant

SWORN TO AND SUBSCRIBED before me on October 4, 2018.

(NOTARY STAMP)

**JENNIFER G. WEBB
NOTARY PUBLIC
STATE-AT-LARGE, KENTUCKY
MY COMMISSION EXPIRES:
MAY 23, 2019**



Signature of Notary Public