

No. 2017- 4906

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

Date: JAN 23 2017

Subject Considered:

HUMANA INSURANCE COMPANY
500 West Main Street
Louisville, KY 40201-7436

CONSENT ORDER
TDI ENFORCEMENT FILE NO. 10416

General remarks and official action taken:

The commissioner of insurance considers whether disciplinary action should be taken against Humana Insurance Company (Humana).

WAIVER

Humana acknowledges that the Texas Insurance Code and other applicable laws provide certain rights. Humana waives all of these rights and any other applicable 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 any provision of the Insurance Code or rule or regulation of the department and Humana maintains the existence of any violation is in dispute.

FINDINGS OF FACT

1. TDI issued Humana life, accident, and health license no. 93526 on May 2, 1980.
2. A Texas consumer purchased an individual health insurance policy (form no. is TX-70129 PREM 8/2002) from Humana that became effective on December 1, 2007.
3. Language in the consumer's policy prohibits retroactive premium increases. The policy states:

After the first 12 consecutive months, premium may change **on any premium due date** for any of the reasons stated above or any of the following:

- A new rate table applies;
 - Any covered person's age increases; or
 - Any covered person's rating classification changes.
 - We will provide written notice of at least [31] days prior to the effective date of any premium change. (emphasis added)
4. The consumer's initial semi-annual premium due dates were December 1st and June 1st.
 5. On November 22, 2013, the consumer sent Humana a \$2,429.44 premium check for the semi-annual billing period of December 1, 2013, to May 31, 2014.
 6. On December 20, 2013, Humana mailed the consumer a notice stating that his policy renewal date of December 1, 2013, would be extended until March 1, 2014, and that the consumer's new semi-annual premium would be increased to \$2,848.74 due to Affordable Care Act fees and taxes.
 7. On March 27, 2014, Humana sent the consumer a statement with a prior due date of December 1, 2013. It stated that the additional amount due for the premium payment period December 1, 2013, to May 31, 2014, was \$429.30.
 8. On March 28 and 31, 2014, the consumer attempted to reach Humana by phone to address the matter, but was placed on hold and was not able to speak to a customer service representative.
 9. On March 31, 2014, the consumer wrote to Humana and asserted that its calculation was incorrect because he received his December 1, 2013, through May 31, 2014, premium statement and paid it before its due date of December 1, 2013. The consumer requested that Humana correct his billing statements to reflect a zero balance and send him a copy.
 10. For the June 1, 2014, to November 30, 2014, billing period, Humana sent the consumer a statement with an amount due of \$3,502.69. His previous balance and past due amount was \$429.30. "Adjustments" included "+214.65." His current charges were \$2,858.74 (\$2,848.74 for premium plus a \$10.00 administrative fee).
 11. On May 27, 2014, the consumer paid the increased amount due of \$2,858.74 for the June 1, 2014, through November 30, 2014, premium payment period by check, which included the past due amount of \$429.30.
 12. On July 12, 2014, the consumer wrote Humana and reported the billing error on his June 1, 2014, statement. Humana's automated billing system statement showed that he still owed \$214.65. Although, the consumer considered the \$214.65 balance due to be a retroactive premium increase for March, April, and May, 2014, he enclosed a check for \$214.65.

13. On November 29, 2014, the consumer wrote Humana and reported that it had not corrected the billing error on his account. He requested that Humana credit his account for the advanced payment of \$214.65 he made on July 12, 2014, for the December 1, 2014, to May 31, 2015, billing period. He enclosed a check to Humana for \$2,644.09, for his December 1, 2014, to May 31, 2015, billing period.
14. On March 1, 2015, Humana increased the consumer's policy premium from \$2,848.74 to \$3,395.34 semi-annually. However, Humana later determined that this amount was incorrect.
15. Humana sent the consumer a billing statement due September 1, 2015, with a current balance of \$5,590.96, a previous balance of \$2,858.74, applied payments of \$2,644.09, current charges of \$3,405.34, and adjustments of \$1,970.97.
16. On August 27, 2015, the consumer sent Humana a check for \$5,103.01.
17. On July 6, 2015, the consumer filed a complaint with TDI's Consumer Protection Section.
18. The consumer requested that TDI help him obtain corrected billing statements from Humana for the following premium increases, which occurred prior to his policy premium due date:

Months prior to premium due date	Extra premium charged	Date of Request
March, April, May 2014	\$214.65	On July 12, 2014, and November 29, 2014, the consumer sent letters to Humana
March, April, May 2015	\$273.30	On July 6, 2015, the consumer filed a complaint with TDI.
June, July, August 2015	\$273.30	
Total premium overcharged	\$761.25	

19. On January 15, 2016, and April 11, 2016, and Enforcement staff sent Humana a request for information letters. Humana did not respond to these requests for information within the statutory timeframe.
20. On April 22, 2016, Humana sent the consumer corrected billing statements.

21. On February 23, 2016, Humana informed TDI that it owed premium credits to 83 other Texas policyholders on semi-annual billing cycles due to changed renewal dates.
22. On March 31, 2016, Humana informed TDI that it owed premium credits to an additional 68 policyholders on quarterly billing cycles. Humana initially informed TDI that it owed \$90,561.16 in premium credits to 151 Texas policyholders and was in the process of providing premium credits to these additional policyholders.
23. Humana later determined that 135 Texas consumers were impacted and it owed them \$112,156.47 in restitution.
24. Seventy-three out of 134 additional policyholders remained active and 61 policyholders terminated their contracts.
25. To date, Humana has paid \$115,998.92 in restitution, not including interest, to the 135 impacted Texas consumers, including 12 policyholders who terminated their plans prior to paying the extra premium charges:
 - a. \$66,804.66 total restitution (these amounts vary by consumer based on policy type and level of benefits), as premium credits, to the 73 policyholders that remained active enrollees,
 - b. \$48,433.01 restitution (these amounts vary by consumer based on policy type and level of benefits), as refund checks, to the 49 policyholders that terminated their policies,
 - c. no restitution to 12 policyholders notified of the rate increase, but who terminated their plans prior to paying the billing statement with the rate increase, and
 - d. \$761.25 premium credit to the initial complaining policyholder.

CONCLUSIONS OF LAW

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 31.002; 38.001, 82.051-82.055, 84.021-84.022, and 541.051; TEX. GOV'T CODE §§ 2001.051-2001.178; and 28 TEX. ADMIN. CODE § 3.3050(a)(2).
2. The commissioner has authority to informally dispose of this matter as set forth under TEX. GOV'T CODE § 2001.056, TEX. INS. CODE §§ 82.055 and 36.104, and 28 TEX. ADMIN. CODE § 1.47.
3. Humana violated 28 TEX. ADMIN. CODE § 3.3050(a)(2) because it did not include a statement that the premium may be increased upon the renewal date at the top of the first

page of each policy under the company name, logo, or masthead (and address if shown) in not less than 10 point type.

4. Humana violated TEX. INS. CODE § 541.051(1)(A) because it engaged in an unfair method of competition or an unfair or deceptive act or practice in the business of insurance by making, issuing, or circulating or causing to be made, issued, or circulated an estimate, illustration, circular, or statement misrepresenting with respect to a policy issued or to be issued the terms of the policy.
5. Humana violated TEX. INS. CODE § 38.001 by failing to timely respond to requests for information.

The commissioner orders Humana Insurance Company to comply with the following:

- a. Humana Insurance Company must issue corrected billing statements showing the amount of the premium credit to the 122 additional policyholders within 45 days from the date of this order.
- b. Humana Insurance Company must pay restitution in the form of a company check or reimbursement to each policyholder identified as having an overcharge. Additionally, Humana Insurance Company must pay interest on the overcharge to all impacted policyholders. The interest payment check must include both the dollar amount of the overcharge, plus simple interest due on the overcharge. The rate of interest shall be 5% per annum.
- c. Any restitution checks that are returned to Humana Insurance Company with an address correction must be promptly resent to the correct address. Funds from any restitution checks that are returned thereafter for incorrect addresses and from checks that are not negotiated prior to one year after the date of the issuance of a check will be presumed abandoned and delivered to the comptroller pursuant to the procedures set forth in TEX. PROP. CODE § 72.001 *et. seq.* Humana Insurance Company must copy the department on any correspondence pertaining to funds that are sent to the comptroller.
- d. Humana Insurance Company must report the premium credits made to the policyholders by submitting a complete and sortable electronic spreadsheet to the department within 60 days of the date of this order. The spreadsheet must contain the following information:
 - i. policy number;
 - ii. policyholder name;
 - iii. policyholder address;
 - iv. policy effective date;

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- v. policy expiration date;
 - vi. overcharge amount;
 - vii. dollar amount of simple interest;
 - viii. date(s) restitution checks mailed or credits applied;
 - ix. the total sum of all overcharges;
 - x. the total sum of all simple interest; and
 - xi. the total sum of all restitution paid (total overcharges plus the total of the simple interest).
- e. Humana Insurance Company must send all submissions required under the terms of this order by email to: jeannie.ricketts@tdi.texas.gov, and catherine.bell@tdi.texas.gov, or their successors.
- f. The commissioner orders Humana Insurance Company, to pay an administrative penalty of \$75,000 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 40111, P.O. Box 149104, Austin, Texas, 78714-9104.



David C. Mattax
Commissioner of Insurance

Approved as to Form and Content:



Jeannie Ricketts, Staff Attorney
Enforcement Section, Compliance Division
Texas Department of Insurance

