No. 2018- 5494

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF INSURANCE

Date: **MAY 0 4 2018**

Subject Considered:

CHRISTUS Health Plan
919 Hidden Ridge
Irving, Texas 75038-3813

CONSENT ORDER
TDI ENFORCEMENT FILE NO. 11319

General remarks and official action taken:

The subject of this order is whether disciplinary action should be taken against CHRISTUS Health Plan.

WAIVER

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

FINDINGS OF FACT

1. CHRISTUS, company ID No. 51833, has held a basic service health maintenance organization license with TDI since November 10, 2011.

2. Effective January 1, 2015, CHRISTUS and Express Scripts Utilization Management Company (ESUM) entered into a pharmacy benefits management agreement, which included provisions related to drug utilization review.

3. CHRISTUS has a duty to monitor all delegated entities to ensure that they comply with all applicable rules and statutes.

4. On January 15, 2016, TDI commenced a desk audit of ESUM, the findings of which resulted in TDI issuing order no. 2018-5330 against ESUM. TDI staff determined

ESUM had violated multiple Texas insurance laws while conducting utilization reviews on behalf of CHRISTUS. The violations included the following:

a.   failing to use the previously approved adverse determination templates,

b.   allowing unqualified personnel to perform utilizations reviews and make adverse determinations,

c.   failing to afford health care providers with a reasonable opportunity to discuss requested prescriptions with a physician prior to issuing an adverse determination,

d.   failing to make adequate attempts to contact providers prior to a denial, and

e.   failing to provide a telephone number for providers to call to request a peer-to-peer discussion prior to an adverse determination.

5.   During this investigation, TDI informed CHRISTUS it did not have the ESUM delegation agreement in its records. CHRISTUS filed the agreement on March 13, 2017.

6.   Following notification from TDI of its desk audit findings related to ESUM, CHRISTUS undertook its own audit to validate and better understand noted deficiencies. Through this process, CHRISTUS found that the issues related to unapproved and deficient template letters have been corrected. Further, it understands that ESUM is making or has made corrections to address the findings related to utilization review by unqualified personnel, failure to give providers reasonable opportunity for discussion, failure to contact provider before denial, and failure to give providers with telephone numbers for peer-to-peer discussion.

7.   CHRISTUS intends to put ESUM on corrective action to ensure that the deficiencies found through auditing by TDI and CHRISTUS are adequately addressed. CHRISTUS will ensure that the processes adopted by ESUM to address the deficiencies are compliant with state law and regulation. Corrective action will include quarterly meetings with ESUM's prior authorization department, periodic review of department personnel, and call monitoring access.

CONCLUSIONS OF LAW

1.   The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE chs. 82, 84, 843, 1272, and 4201; 28 TEX. ADMIN. CODE §§ 11.2601, 11.2603, and 11.2608; 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.   CHRISTUS 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. CHRISTUS violated TEX. INS. CODE § 1272.052(b) and 28 TEX. ADMIN. CODE § 11.2601 by failing to file a delegation agreement with the department not later than the 30th day after the date the agreement was executed.

5. CHRISTUS retained ultimate responsibility to monitor its delegated entity and to ensure that its utilization reviews were performed in a manner that complied with TEX. INS. CODE ch. 4201, pursuant to TEX. INS. CODE §§ 1272.056 and 1272.060 and 28 TEX. ADMIN. CODE §§ 11.2601 and 11.2603.

6. CHRISTUS violated TEX. INS. CODE chs. 843, 1272, and 4201 when its delegated entity failed to comply with applicable statutes or rules, pursuant to 28 TEX. ADMIN. CODE § 11.2603.
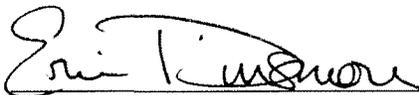
It is ordered that CHRISTUS Health Plan pay an administrative penalty of $30,000 within 30 days from the date of this consent order. The administrative penalty must be paid by company check, cashier's check, or money order made payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: Enforcement Section, Division 60851, MC 9999, P.O. Box 149104, Austin, Texas 78714-9104.

Kent C. Sullivan
Commissioner of Insurance

APPROVED AS TO FORM AND CONTENT:

Erin Dinsmore, Staff Attorney
Enforcement Section

Affidavit

STATE OF __Texas__ §

§

COUNTY OF __Dallas__ §

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

"My name is __NANCY HULSTMANN__. 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 __CEO__ and am the representative of CHRISTUS Health Plan. I am duly authorized by said organization to execute this statement.

CHRISTUS Health Plan 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 _____ __1/29__ _____, 2018.

(NOTARY STAMP)

_____
Signature of Notary Public

JENNY TURNER
Notary Public, State of Texas
Comm. Expires 10-18-2020
Notary ID 126463058