

No. 2020-6340

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

Date: 05/01/2020

Subjects Considered:

Humana Insurance Company
Humana Health Plan of Texas, Inc.
P.O. Box 740036
Louisville, Kentucky 40201-7436

Consent Order
TDI Enforcement File Nos. 12576, 16136, 16137, and 18247

General remarks and official action taken:

This is a consent order with Humana Insurance Company (HIC) and Humana Health Plan of Texas, Inc. (HHPT) (together, Humana). In 2015, HIC initiated a strategy to simplify the number of individual health products it offered in Texas and, eventually, withdrew from the Texas individual health market in 2018. Terminations that occurred in 2016 as part of that strategy violated Texas insurance laws. Additionally, the Texas Department of Insurance (TDI) has discovered instances where Humana used unapproved association plan forms and failed to notify associations of changes to policy language upon renewal. Lastly, between 2014 and 2017, Humana violated rating regulations by rating small employers as if they were large employers. Humana has agreed to pay a \$500,000 administrative penalty and \$139,607.33 in restitution.

Waiver

Humana acknowledges that the Texas Insurance Code and other applicable laws provide certain rights. Humana waives all 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 the Texas Insurance Code or of a rule of TDI and that the existence of a violation is in dispute.

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Findings of Fact

1. TDI certified HIC, company identification No. 1040, as a life, accident, and health insurer effective May 2, 1980.
2. TDI certified HHPT, company identification No. 702, as a basic health maintenance organization (HMO) effective March 15, 1982.

2016 Discontinuation

3. In 2015, HIC discontinued a portion of its individual health policies, affecting 5,874 policyholders in Texas. This discontinuance was the subject of Official Order No. 2018-5723, which imposed an administrative penalty of \$100,000. The order's findings and conclusions included that in 2015 HIC discontinued guaranteed renewable policies without offering replacement coverage.
4. In 2016, HIC terminated significant portions of its individual health coverage by terminating its Affordable Care Act (ACA) compliant individual health insurance policies while maintaining its transitional and grandfathered individual health insurance policies.
5. Between September 14 and 16, 2016, HIC sent termination notices to 14,312 ACA-compliant individual policyholders in Texas. These terminated policies were guaranteed renewable, but HIC did not offer replacement coverage to these policy holders.
6. In 2017, HIC filed withdrawal plans and exited the Texas individual health insurance market.

Mishandling of Association Plans

7. On May 31, 2018, Humana informed TDI it was discontinuing each of its small employer association plans on renewal. TDI then reviewed those association plans and identified violations of Texas insurance laws.
8. Humana switched policy forms under which it was providing coverage to associations at renewal without first notifying those associations about changes to the policy. In September 2014, September 2015, and May 2018, Humana

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failed to provide associations with either a 60-day notice of uniform benefit modification or a 90-day notice of discontinuation of coverage with an offer of replacement coverage.

9. In September 2015, July 2016, November 2017, and December 2017, Humana issued unapproved PPO and HMO forms to six associations.
10. Humana issued five new associations plans before it obtained TDI's approval of the associations' eligibility documents. TDI approved eligibility documents in June 2018 for four plans to which Humana had issued coverage in late 2017 and one plan to which it had issued coverage in May 2018.

Small Employer Association Plan Rating

11. Humana self-reported to TDI that, from 2014 through 2017, it had been rating each of the small employers within seven association group plans as if they were large employers.
12. During this time, Humana provided association group coverage to 555 small employers.
13. Humana used a rating methodology that resulted in small employers within the association groups being charged premiums that deviated more than 25% from the index rate, in violation of Texas insurance laws.
14. Humana rated small employer members as follows:

Year	Overcharged (plus 25% from the index rate)	Undercharged (minus 25% from the index rate)	Correctly charged	Total by Year
2014	1	0	0	1
2015	12	39	33	84
2016	2	61	83	146
2017	5	36	283	324
Total by charge	20	136	399	555

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15. Though Humana acknowledged noncompliance in August 2017 and agreed to make changes, Humana continued to use noncompliant rates for groups renewing in December 2017. In spring 2018, Humana worked with TDI to implement a compliant small employer rating methodology for its 2018 renewals.
16. As part of the resolution of this case, Humana agrees to pay restitution to the 20 small employers of the association groups who were overcharged by 25% from the rate index, as well as the 11 small employers who did not renew their plans.

Conclusions of Law

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 31.002, 82.051-82.056, 84.021-84.022, 827.007, 1251.052, 1271.101, 1501.003, 1501.108, 1501.109, 1501.214, and 1701.051; 28 TEX. ADMIN. CODE §§ 3.3038, 7.1804, 26.5, 26.11, 26.13, and 26.16; 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. HIC violated 28 TEX. ADMIN. CODE § 3.3038(d)(2) by failing to offer each covered individual on a guaranteed issue basis the option to purchase other individual hospital, medical, or surgical insurance coverage offered by the insurer at the time of the discontinuation.
5. Humana violated TEX. INS. CODE §§ 1501.108(d) and 1501.109(d) by failing to provide small employer association groups either a 60-day notice of uniform benefit modification or a 90-day notice of discontinuation of coverage with an offer of replacement.

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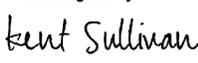
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6. Humana violated TEX. INS. CODE §§ 1701.051 and 1271.101 by failing to file and obtain TDI's approval of its evidence of coverage and group contract forms.
7. Humana violated TEX. INS. CODE § 1251.052(b)(1) and 28 TEX. ADMIN. CODE § 3.6(c)(3)(B) and (c)(3)(C) by failing to file association eligibility documents with TDI prior to use.
8. Humana violated TEX. INS. CODE §§ 1501.204 and 1501.206 and 28 TEX. ADMIN. CODE §§ 26.5(d) and 26.11 when rating its small employer association groups.

Order

It is ordered that Humana Insurance Company and Humana Health Plan of Texas, Inc. must pay, jointly and severally, an administrative penalty of \$500,000 within 30 days from the date of this order. The penalty must be paid by company check, cashier's check, or money order made payable to the "State of Texas" and sent to the Texas Department of Insurance, Attn: Enforcement Section, Division 60851, MC 9999, P.O. Box 149104, Austin, Texas, 78714-9104.

It is further ordered that Humana Insurance Company and Humana Health Plan of Texas, Inc. must pay, jointly and severally, restitution in the amounts identified to 31 small employer association health benefit plan participants, which total \$139,607.33. Proof of payment of the restitution must be sent electronically to the department within 30 days of the date of the order to EnforcementReports@tdi.texas.gov.

DocuSigned by:

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Kent C. Sullivan
Commissioner of Insurance

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Recommended and reviewed by:



Leah Gillum, Deputy Commissioner
Enforcement Division



Erin Dinsmore, Staff Attorney

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Affidavit

STATE OF KENTUCKY

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COUNTY OF JEFFERSON

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Before me, the undersigned authority, personally appeared the affiant, who being by me duly sworn, 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 & Military Business and am the authorized representative of Humana Insurance Company and Humana Health Plan of Texas, Inc. I am duly authorized by said organizations to execute this statement.

Humana Insurance Company and Humana Health Plan of Texas, Inc. waive rights provided by the Texas Insurance Code and other applicable laws and acknowledge the jurisdiction of the Texas commissioner of insurance.

Humana Insurance Company and Humana Health Plan of Texas, Inc. are voluntarily entering into this consent order Humana Insurance Company and Humana Health Plan of Texas, Inc. consent to the issuance and service of this consent order."

CH Hunter

Affiant

SWORN TO AND SUBSCRIBED before me on April 13, 2020.

(NOTARY SEAL)



Jennifer G. Webb
Signature of Notary Public