

No. **2023-8027**

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

Date: 6/16/2023

Subject Considered:

Baylor Scott & White Insurance Company
1206 W Campus Dr
Temple, Texas 76502

Consent Order
TDI Enforcement File No. 26480

General remarks and official action taken:

This is a consent order with Baylor Scott & White Insurance Company, formerly known as Insurance Company of Scott and White, for violations found in a triennial quality of care examination. Baylor Scott & White Insurance Company has agreed to pay a \$60,000 administrative penalty.

Waiver

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

Findings of Fact

Licensure and Background

1. On May 23, 2003, the department issued a life, accident, and health insurance certificate of authority to Insurance Company of Scott and White. At the time of

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the 2019 triennial quality of care examination, the company's name was Insurance Company of Scott and White.

2. On or about August 24, 2021, the company changed its name to Baylor Scott & White Insurance Company (BSW).
3. This triennial quality of care exam was BSW's first exam and covered activity between January 1, 2017, and December 31, 2019, on its Preferred Provider Organization and Exclusive Provider Organization operations under the health line of business.
4. BSW submitted a corrective action plan to the department after the exam.

Utilization Review Requests

5. The department reviewed 1,702 reviews done by BSW's utilization review agent.
6. In 14% (231 of 1,702) of requests reviewed, a notice of determination made by the utilization review agent was sent later than the second working day after the date of the request.

Initial Adverse Determinations

7. The department sampled and reviewed 35 initial adverse determinations.
8. In 11% (4 of 35) of the sample, an adverse determination was issued without affording the provider of record a reasonable opportunity to discuss treatment no less than one working day prior to issuing the determination.
9. In 43% (15 of 35) of the sample, the adverse determination was issued late.
 - a. In 14 such instances, an adverse determination on a preauthorization request was issued later than three calendar days after receipt of the request.
 - b. In one instance, an adverse determination on concurrent hospitalization care was issued later than three working days after receipt of the request.

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10. In 9% (3 of 35) of the sample, the written notice did not include the professional specialty of the physician, doctor, or other health care provider that made the adverse determination.

Adverse Determination Appeals

11. The department sampled and reviewed 11 adverse determination appeals.
12. In 55% (6 of 11) of the sample, the utilization review agent failed to include in the appeal acknowledgment letter, a list of relevant documents that must be submitted by the appealing party.
13. In 27% (3 of 11) of the sample, BSW failed to have a physician licensed to practice medicine make the decision on the appeal; instead a registered nurse made the determination.
14. The department reviewed one expedited adverse determination appeal. In that case, BSW did not complete the appeal within one working day from the date of the appeal.

Sample Claims Review

15. The department sampled and reviewed 50 claims, five of which were paid late.
16. In 80% (4 of 5) of the late paid claims, BSW failed to pay the applicable penalty and interest at the time of the exam but has since paid all penalties and interest mentioned below.
 - a. In one noninstitutional and one institutional claim paid between one and 45 days late, BSW did not pay 50% of the difference between the billed charges and the contracted rate or \$100,000, whichever was less.
 - b. In one noninstitutional claim paid between 46 and 90 days late, BSW did not pay 100% of the difference between the billed charges and the contracted rate or \$200,000, whichever was less.
 - c. In one noninstitutional claim paid 91 days late, BSW did not pay 100% of the difference between the billed charges and the contracted rate or \$200,000, whichever was less, plus 18% interest on that amount.

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17. The department sampled and reviewed 40 Explanation of Benefits sent to an enrollee. In 8% (3 of 40) of those instances, BSW provided an enrollee an explanation of benefits that included a remark code indicating a payment made to a non-network provider and did not include the number for the department's consumer protection division for complaints regarding payment.
18. In less than 1% (23 of 70,113) of the 2019 claims reviewed, BSW denied claims as experimental and investigational but did not treat the claim as an adverse determination as required by Texas law.
19. In 2019, BSW received a total of 70,133 claims, 244 (.35%) of which were paid late. In 91% (221 of 244) of those late paid claims, BSW did not pay prompt pay penalties and interest.
20. In 2018, BSW failed to pay prompt pay penalties and interest in 97% (226 of 234) of late paid claims.
21. In 2017, BSW failed to pay prompt pay penalties and interest in 80% (88 of 117) of late paid claims.
22. During the exam, BSW explained that an error in its claims processing environment was the root cause of the issue and had been remedied. BSW has since paid all applicable penalties and interest for the 535 claims mentioned above.
23. BSW failed to include 7,814 delegated PPO repriced claims on its quarterly prompt payment claims reports that it submits to the department.

Initial Complaints

24. The department sampled and reviewed 24 initial complaints. In 38% (3 of 8) of the sample, BSW failed to respond to an inquiry from the department in writing no later than the 15th day after the date the inquiry was received.

Provider Notifications

25. The department reviewed published notifications of the opportunity for health care providers to contract with BSW. The department reviewed five preferred provider designation applications. In each instance, BSW sent a notice declining to contract without giving the right of a review of the denial.

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Health Care Provider Credentialing

26. The department reviewed 57,432 credentialing files.
27. In 21% (11,797 of 57,432) of the reviewed files, BSW failed to recredential physicians/providers within 36 months of the previous credentialing decision.

Conclusions of Law

1. The commissioner has jurisdiction over this matter under TEX. INS. CODE Chs. 38, 82, 84, 1301, 1451, 1456, and 4201 and 28 TEX. ADMIN. CODE Chs. 3, 19, and 21.
2. The commissioner has the authority to informally dispose 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. BSW 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. BSW violated 28 TEX. ADMIN. CODE § 3.3706(b)(1)(B) by failing to include the right of an appeal of a denial in the written notice of denial of a preferred provider designation application.
5. BSW failed to adhere to the National Committee of Quality Assurance Credentialing Standards in violation of 28 TEX. ADMIN. CODE § 3.3706(c).
6. BSW violated 28 TEX. ADMIN. CODE § 19.1709(c)(4) by failing to include in the written notice of adverse determination, the professional specialty of the physician, doctor, or other health care provider that made the adverse determination.
7. BSW violated 28 TEX. ADMIN. CODE § 19.1711(a)(3)(C) because it failed to include a list of relevant documents that must be submitted by the appealing party to the utilization review agent on the appeal acknowledgement letter.

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8. BSW violated 28 TEX. ADMIN. CODE § 19.1718(d)(2) because its utilization review agent failed to issue a letter providing notice of an adverse determination within three working days after the preauthorization request.
9. BSW violated 28 TEX. ADMIN. CODE § 21.2821 by failing to include its delegated Preferred Provider Organization repriced claims on its quarterly prompt payment claims reports.
10. BSW violated TEX. INS. CODE § 38.001 by failing to respond to a written inquiry from the department in writing no later than the 15th day after the date the inquiry was received.
11. BSW violated TEX. INS. CODE § 1301.135(c) and 28 TEX. ADMIN. CODE § 19.1718(d)(1) because its utilization review agent failed to issue the adverse determination within three calendar days of receiving the request.
12. BSW violated TEX. INS. CODE § 1456.003(d) by failing to include the number for the department's consumer protection division for complaints regarding payment in its explanation of benefits that included a remark code indicating a payment made to a non-network provider sent to an enrollee.
13. BSW violated TEX. INS. CODE Chap 4201 and 28 TEX. ADMIN. CODE Chap 19, SubChap R by denying a claim for experimental or investigational and not treating it as an adverse determination.
14. BSW violated TEX. INS. CODE § 4201.206 and 28 TEX. ADMIN. CODE § 19.1703(b)(26)(A), and 19.1710 because it failed to provide the health care provider who ordered, requested, provided, or is to provide the service a reasonable opportunity to discuss with a physician licensed to practice medicine the patient's treatment plan and the clinical basis for the determination.
15. BSW violated TEX. INS. CODE § 4201.302 by failing to mail or transmit a notice of determination no later than the second working day after the date of the request for utilization review and the agent received all the information necessary to complete the review.
16. BSW violated TEX. INS. CODE § 4201.356(a) and 28 TEX. ADMIN. CODE § 19.1711(a)(4) because it failed to have a physician licensed to practice medicine make the decision on the appeal.

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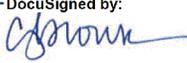
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17. BSW violated TEX. INS. CODE § 4201.357(b) and 28 TEX. ADMIN. CODE § 19.1711(a)(7)(B) by failing to complete an expedited adverse determination appeal within one working day from the date all information necessary to complete the appeal is received.

Order

It is ordered that Baylor Scott & White Insurance Company pay an administrative penalty of \$60,000 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.

It is also ordered that Baylor Scott & White Insurance Company report to the department on or before 30 days from the date of this order. The report will affirm that Baylor Scott & White Insurance Company has fully implemented its post-exam corrective action plan. If the company has not yet fully implemented its post-exam corrective action plan, the report will detail how the company intends to fully implement its plan, resources dedicated to implementation, timelines, and a process for independent verification of objective progress to comply with Texas law. The company must send the report to EnforcementReports@tdi.texas.gov.

DocuSigned by:

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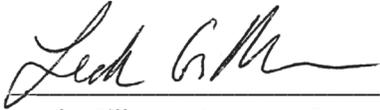
Cassie Brown

Commissioner of Insurance

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Recommended and reviewed by:



Leah Gillum, Deputy Commissioner
Fraud and Enforcement Division



Stephanie Andrews, Staff Attorney
Enforcement

Affidavit

STATE OF Texas §

COUNTY OF Bell §

Before me, the undersigned authority, personally appeared Jeffrey C. Ingram who being by me duly sworn, deposed as follows:

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

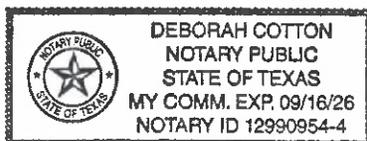
I hold the office of President/CEO and am the authorized representative of Baylor Scott & White Insurance Company. I am duly authorized by said organization to execute this statement.

Baylor Scott & White 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."

Jeffrey C. Ingram
Affiant

SWORN TO AND SUBSCRIBED before me on May 26, 2023.

(NOTARY SEAL)



DCotton
Signature of Notary Public

Deborah Cotton
Printed Name of Notary Public