

No. **2018-5652**

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

Date: Oct. 08, 2018

Subject Considered:

HUMANA HEALTH PLAN OF TEXAS, INC.
PO Box 740036
Louisville, Kentucky 40201-7436

CONSENT ORDER
TDI ENFORCEMENT FILE NO. 16922

General remarks and official action taken:

The subject of this order is whether disciplinary action should be taken against Humana Health Plan of Texas, Inc. (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) that authorizes it to operate as a basic health maintenance organization (HMO).
2. Humana markets and sells several different group HMO plans with varying network sizes in Texas for the 2018 plan year. For the 2018 plan year, Humana's HMO plans cover approximately 10,600 Texas consumers, as of July 31, 2018.
3. Humana's HMO plans must provide for "basic health services [for] enrollees as needed and without limitation as to time and cost other than any limitation prescribed by rule of the commissioner." TEX. INS. CODE § 1271.151.

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4. Humana HMO's evidence of coverage must provide for "inpatient hospital services, including...anesthesia." *See* 28 TEX. ADMIN. CODE § 11.508(a)(2).
5. Humana's HMO plan documents, both a master group contract and evidence of coverage, provide for certain "covered health services." Anesthesia for surgical or other facility-based services purposes, whether inpatient or outpatient, is a "covered health service."

HMO Network Adequacy Requirements

6. Humana must contract with enough providers to fulfill its obligation to provide health care services as required under its health care plan, pursuant to TEX. INS. CODE §§ 843.082 and 843.461(b)(5).
7. Humana must have adequate provider networks to deliver basic health services and other benefits promised by its HMO plan document. Texas law has a sizable list of HMO network adequacy standards, as set out in 28 TEX. ADMIN. CODE § 11.1607. Humana's provider networks, among other requirements, must:
 - a. be sufficient to furnish services covered by the HMO plan document in a service area.
 - b. include a sufficient number of primary care physicians and specialists with hospital admitting privileges to participating facilities who are available and accessible 24 hours per day, seven days per week, within a service area.
 - c. ensure that all covered services are accessible and available within certain mileage limits of no more than 75 miles from any point in a service area.
8. When Humana is unable to meet these network adequacy standards, it must file an access plan for department approval. The access plan must detail items such as:
 - a. the geographic area (and a descriptive map) in which contracted providers are not available;
 - b. the reason that the network is inadequate;
 - c. "procedures that the HMO will use to assist enrollees in obtaining medically necessary services when no network physician or provider is available, including procedures to coordinate care to hold enrollees harmless and eliminate or limit the likelihood of balance billing;"
 - d. "procedures detailing how out-of-network benefit claims will be handled when no physicians or providers are available;"
 - e. "steps the HMO will take to attempt to bring its network into compliance;" and "a process for negotiating with a non-network physician or provider before services being rendered, when feasible." 28 TEX. ADMIN. CODE § 11.1607(j).

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9. Any access plan must be filed along with the HMO's annual network adequacy report on or before August 15 of each year. 28 TEX. ADMIN. CODE §§ 11.1607(k) and 11.1610.
10. Humana is required to provide notice no later than two business days of any substantial decrease in the availability of facility-based anesthesiology providers at any one facility, specifically reduction of 75 percent or more of the contracted facility-based anesthesiology groups for that facility. 28 TEX. ADMIN. CODE § 11.1612(j). This notice must be displayed prominently on Humana's website. 28 TEX. ADMIN. CODE § 11.1612(j)(4).

Facility-Based Anesthesia Contracts Terminated

11. At the beginning of 2018, Humana's various HMO networks had contracts with an adequate network of facility-based anesthesia providers.
12. Beginning in January 2018 and continuing through at least June 2018, a total of four Humana HMO 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.
13. The terminations left no in-network facility-based anesthesiologists in 20 facilities while 27 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 within-network facility-based anesthesia providers after contract termination | Time period |
|---------------------|--|--|------------------------|
| Austin / Travis | 8 | 4 | May - September 2018 |
| Houston / Harris | 8 | 9 | April - September 2018 |
| San Antonio / Bexar | 4 | 14 | February - August 2018 |

14. 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 HMO anesthesia providers in Austin.

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Failure to Disclose

15. When each facility-based 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.
16. Humana did not adequately disclose this fact to its insureds.
17. 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.
18. None of Humana's notices were posted prominently on its website as required by Texas law under 28 TEX. ADMIN. CODE § 11.1612(j).
19. 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 enrollee's evidence of coverage, some enrollees received balance bills. When Humana enrollees contacted Humana about being balance billed by the out-of-network anesthesiologists, Humana attempted to hold its enrollees harmless pursuant to Texas law.
20. 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 evidence of coverage.
21. 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.

Statements to the Department

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22. Humana filed its required Annual Network Adequacy Reports for its multiple HMO networks on August 15, 2018. The reports did not include an access plan to address the then-inadequate facility-based anesthesia networks.
23. Humana made these representations despite the fact that the department had contacted Humana earlier in August 2018, shortly after the department learned of the contract terminations, and inquired as to the adequacy of Humana's facility-based anesthesia networks.
24. After discussions with the department, on August 30, 2018, Humana committed to filing access plans and to the claims payment and reprocessing steps described in Findings of Fact 20-21.
25. 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, 843, 1271; 28 TEX. ADMIN. CODE §§ 11.1600-11.1612; 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 comply substantially with TEX. INS. CODE Chs. 843 and 1271 or rules adopted under those chapters, as contemplated by TEX. INS. CODE § 843.461(b)(10).
5. Humana did not maintain an adequate HMO delivery network for facility-based anesthesiologists, in violation of TEX. INS. CODE § 843.082 and/or 28 TEX. ADMIN. CODE § 11.1607.
6. Humana did not file an access plan to address all of its network inadequacies for facility-based anesthesiologists, in violation of 28 TEX. ADMIN. CODE § 11.1607(j) and (k).

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7. Humana failed to adequately notify its insureds of a substantial decrease in the availability of certain providers, in violation of 28 TEX. ADMIN. CODE § 11.1612(j).

It is ordered that Humana Health Plan of Texas, Inc. fully comply with Findings of Fact 20-21.

Humana must send all submissions regarding claims information as set out in Finding of Fact 21 by email to EnforcementReports@tdi.texas.gov.

It is ordered that Humana Health Plan of Texas, Inc. 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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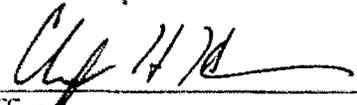
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Before me, the undersigned authority, personally appeared the affiant, who was duly sworn by me and deposed as follows:

"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 Health Plan of Texas, Inc. I am duly authorized by said organization to execute this statement.

Humana Health Plan of Texas, Inc. 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, 2018**



Signature of Notary Public