

No. 2018-5493

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

Date: MAY 04 2018

Subject Considered:

SHA, L.L.C.
12940 N Highway 183
Austin, Texas 78750-3203

CONSENT ORDER
TDI ENFORCEMENT FILE NO. 11314

General remarks and official action taken:

The subject of this order is whether disciplinary action should be taken against SHA, L.L.C. (SHA).

WAIVER

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

FINDINGS OF FACT

1. SHA, DBA FirstCare Health Plans, company ID No. 7717, has held a basic service health maintenance organization license with the Texas Department of Insurance since February 10, 1995.
2. SHA delegated pre-authorization coverage reviews for prescription drugs to Express Scripts Utilization Management Company (ESUM). TDI certified ESUM as a health utilization review company effective November 24, 2009.
3. SHA has a duty to monitor all delegated entities to ensure they comply with all applicable rules and statutes.
4. In December 2013, SHA became aware that ESUM was using adverse determination letter templates that did not contain all required elements.

5. SHA presented TDI with documentation demonstrating its attempts to work with ESUM to correct these issues, including a string of emails between December 2013 and August 2015, statements evidencing weekly status conference calls, and confirmation of two meetings between both companies' chief executive officers. SHA contends that these documents show that ESUM would not comply with SHA's requests to meet all applicable rules and statutes.
6. In 2014, TDI conducted a desk audit of utilization reviews completed in-house by SHA, and determined SHA was sending adverse determination notices TDI had previously disapproved because they did not include required information. After receiving TDI's audit report that detailed the violations found, SHA implemented necessary changes to meet regulatory requirements and assured TDI staff that its future notices would comply with Texas insurance laws.
7. On September 1, 2015, SHA sent final written notice to ESUM that it would be terminating its delegation agreement effective January 1, 2016. SHA terminated the ESUM contract based on ESUM's continued unresponsiveness to SHA's concerns and requests to meet Texas regulatory requirements.
8. ESUM continued to send the noncompliant adverse determinations letters on SHA's behalf until the termination date.
9. 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 determined ESUM had violated multiple Texas insurance laws while conducting utilization reviews on behalf of SHA. 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,
 - e. failing to provide a telephone number for providers to call to request a peer-to-peer discussion prior to an adverse determination, and
 - f. providing inaccurate complaint procedures, citing procedures from chapter 843 of the Texas Insurance Code, instead of chapter 4201.

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.

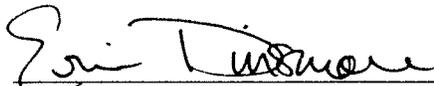
3. SHA has knowingly and voluntarily waived all procedural rights to which it may have been entitled regarding the entry of this order, including, but not limited to, issuance and service of notice of intention to institute disciplinary action, notice of hearing, a public hearing, a proposal for decision, rehearing by the commissioner, and judicial review.
4. SHA retained ultimate responsibility to monitor its delegated entity and ensure that its utilization reviews were performed in a manner that complied with applicable insurance statutes and rules, pursuant to TEX. INS. CODE §§ 1272.056 and 1272.060 and 28 TEX. ADMIN. CODE §§ 11.2601 and 11.2603.
5. SHA 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 SHA, L.L.C. must pay an administrative penalty of \$45,000 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 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
Texas Department of Insurance

