

No. **4320**

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

Date: FEB 25 2016

Subject Considered:

**BLUECROSS BLUESHIELD OF TEXAS, A DIVISION OF HEALTH CARE SERVICE
CORPORATION**
1001 E. Lookout Drive
Richardson, TX 75080-7302

CONSENT ORDER
TDI ENFORCEMENT FILE NO. 9709

General remarks and official action taken:

The commissioner of insurance considers whether disciplinary action should be taken against BlueCross BlueShield of Texas, a division of Health Care Service Corporation (BCBSTX).

WAIVER

BCBSTX acknowledges that the Texas Insurance Code and other applicable laws provide certain rights. BCBSTX waives all of 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), BCBSTX agrees to this consent order with the express reservation that it does not admit to a violation of the Insurance Code or TDI rules, and maintains that the existence of a violation is in dispute.

FINDINGS OF FACT

1. TDI issued BCBSTX health care utilization review agent (URA) license number 119 on August 6, 1993.

2013 URA License Renewal Application

2. On August 1, 2013, the Managed Care and Quality Assurance Office (MCQA) received BCBSTX's 2013 URA renewal application.

3. On November 25 and December 14, 2013, MCQA sent BCBSTX deficiency letters requesting that BCBSTX make several revisions to its templates and attachments to comply with applicable statutes and rules, including its:
 - a. Preferred provider organization (PPO) adverse determination letter template;
 - b. Appeal acknowledgement letter template;
 - c. PPO appeal determination letter - overturned template;
 - d. PPO appeal determination letter – upheld (first letter) template; and
 - e. PPO appeal determination letter – upheld (second letter) template.
4. On December 10, 2013, BCBSTX provided MCQA with copies of its revised templates and attachments.
5. On December 14, 2013, MCQA approved BCBSTX's revisions and asked BCBSTX for two additional revisions to its PPO appeal determination letter – overturned behavioral health.
6. On December 17, 2013, MCQA staff approved BCBSTX's 2013 renewal application.

2014 – 2015 Desk Audit

7. On October 31, 2014, MCQA opened a desk audit of BCBSTX's URA PPO-indemnity insurance adverse determinations case files issued by BCBSTX from January 1, 2014, to October 10, 2014.
8. On November 17, 2014, as part of the desk audit, MCQA staff reviewed 20 randomly-selected PPO-indemnity insurance adverse determination case files. MCQA issued its audit report, which found that, in 14 out of 20 (70%) adverse determination case files, BCBSTX failed to issue to consumers the Texas-specific adverse determination templates and template attachments approved in the 2013 renewal application. Consumers instead received more general federal appeals rights. The unapproved versions of the letters that BCBSTX used included the:
 - a. PPO initial adverse determination letter;
 - b. Initial adverse determination attachment appeal information and procedures;
 - c. Appeal acknowledgement letter;
 - d. PPO appeal determination letter upheld; and
 - e. Utilization management disclaimer.
9. On June 10, 2015, BCBSTX responded to the audit report, and disputed several of the findings. BCBSTX acknowledged that it used unapproved templates, which included federal and not Texas-specific appeal rights, although the members in the sample cases

did participate in the BCBSTX appeal process. Consequently, some consumers did not receive the Texas appeal rights.

10. On June 22, 2015, MCQA sent BCBSTX its final desk audit report.

CONCLUSIONS OF LAW

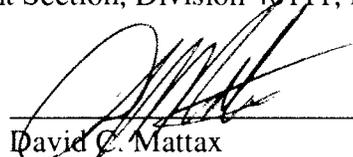
1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 31.002; 82.051-82.055, 84.021-84.022, 4201.102, 4201.204, 4201.107, 4201.206, 4201.302, 4201.303, 4201.304, 4201.351, 4201.353, 4201.355, 4201.356, 4201.357, 4201.360, 4201.401; and 4201.603; 28 TEX. ADMIN. CODE §§ 19.1703, 19.1705, 19.1710, 19.1709, 19.1711, 19.1717, and 19.1718; and TEX. GOV'T CODE §§ 2001.051-2001.178.
2. The commissioner has authority to informally dispose of this matter as set forth under TEX. GOV'T CODE § 2001.056; TEX. INS. CODE §§ 82.055 and 36.104; and 28 TEX. ADMIN. CODE § 1.47.
3. BCBSTX violated TEX. INS. CODE § 4201.102(b) by failing to maintain compliance with TEX. INS. CODE Chapter 4201, Subchapters D, E, and F.
4. BCBSTX violated TEX. INS. CODE § 4201.107 by failing to report material changes to the information disclosed in a form filed under Chapter 4201, Subchapter B, not later than the 30th day after the change takes effect.
5. BCBSTX violated TEX. INS. CODE § 4201.206 and 28 TEX. ADMIN. CODE § 19.1710 by failing, before issuing an adverse determination, to provide the health care provider who ordered the health care services a reasonable opportunity, within the timeframes stated in § 19.1703(26), to discuss with a physician the patient's treatment plan and the clinical basis for the URA's determination.
6. BCBSTX violated TEX. INS. CODE §§ 4201.204, 4201.303(a)(4) and (b) and 4201.351, and 4201.360 and 28 TEX. ADMIN. CODE §§ 19.1705(f) and 19.1709(b)(5) - (9), and 19.1711(a)(7) by failing to include in its adverse determination letters a:
 - a. description of the URA's complaint system, TDI's address, toll-free telephone number, and a statement that the complainant may file a complaint with TDI.
 - b. description of its appeal process as required by § 19.1711.
 - c. copy of the request for a review by an IRO form (LHL009) and notice of the independent review process with instructions that request for a review by an IRO form must be completed by the enrollee.

- d. description of the enrollee's right to an immediate review by an IRO and of the procedures to obtain that review for an enrollee who has a life-threatening condition.
7. BCBSTX violated TEX. INS. CODE §§ 4201.302 and 4201.304(2) and 28 TEX. ADMIN. CODE § 19.1718(d)(1) by failing to issue and transmit a determination indicating whether the proposed medical or health care services are preauthorized within three calendar days after receipt of the request.
8. BCBSTX violated TEX. INS. CODE § 4201.355 and 28 TEX. ADMIN. CODE § 19.1711(a)(3) by failing to: (1) send an appeal acknowledgement letter to the appealing party within five working days from receipt of the appeal; and (2) include a list of relevant documents that must be submitted by the appealing party to the URA.
9. BCBSTX violated TEX. INS. CODE § 4201.206 and 28 TEX. ADMIN. CODE §§ 19.1703(26), 19.1710, and 19.1711(a)(5) by failing, prior to issuing the adverse determination, to:
 - a. Afford the provider of record a reasonable opportunity to discuss the plan of treatment for the enrollee with a physician;
 - b. Provide the provider of record the URA's telephone number;
 - c. Offer a reasonable opportunity within the requested time frames described in 28 TEX. ADMIN. CODE § 19.1703(26);
 - d. Use a physician to conduct the discussion; and
 - e. Document the details of the discussion opportunity provided to the provider of record, including the date and time the URA offered the opportunity to discuss the adverse determination, the date and time that the discussion, if any, took place, and the discussion outcome.
10. BCBSTX violated TEX. INS. CODE Chapter 4201, Subchapters G and H, and 28 TEX. ADMIN. CODE §§ 19.1711(a)(8) and 19.1717 by failing to include in the appeal resolution letter a complete and accurate notice of the independent review process.
11. BCBSTX violated TEX. INS. CODE § 4201.356(b) and 28 TEX. ADMIN. CODE § 19.1711(a)(6) by failing to include information about the provider's right to request a specialty review after the URA denied the appeal.
12. BCBSTX violated TEX. INS. CODE § 4201.357(b) and 28 TEX. ADMIN. CODE § 19.1711(a)(7) by failing to issue the adverse determination within one working day from the date it received all information necessary to complete the expedited appeal.

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COMMISSIONER'S ORDER
BlueCross BlueShield of Texas, a division of
Health Care Service Corporation
TDI Enforcement File No. 9709
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The commissioner orders BlueCross BlueShield of Texas, a division of Health Care Service Corporation, to pay an administrative penalty of \$50,000 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 40111, P.O. Box 149104, Austin, Texas, 78714-9104.



David C. Mattax
Commissioner of Insurance

Approved as to Form and Content:



Jeannie Ricketts, Staff Attorney
Enforcement Section, Compliance Division
Texas Department of Insurance

