

No. 2018-5723

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

Date: NOV 14 2018

Subject Considered:

HUMANA INSURANCE COMPANY
PO Box 740036
Louisville, Kentucky 40201-7436

CONSENT ORDER
TDI ENFORCEMENT FILE NO. 12024

General remarks and official action taken:

The subject of this order is whether disciplinary action should be taken against Humana Insurance Company (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 Humana does not admit to a violation of the Texas Insurance Code or of a rule of TDI, and Humana maintains that the existence of a violation is in dispute.

FINDINGS OF FACT

1. The Texas Department of Insurance (TDI) certified Humana, organization identification No. 1040, as a life, accident, and health insurer effective May 2, 1980.

Failure to Offer Replacement Coverage

2. In February 2015, Humana contacted TDI regarding its strategy to simplify the number of insurance plans it was offering to Texas consumers. The strategy included the discontinuation of two preferred provider forms for the 2016 enrollment period. When asked whether a replacement would be available, Humana advised TDI that Humana's

- Bronze plan would be available, off-exchange, to all policyholders affected by the discontinuation.
3. In a letter dated August 20, 2015, Humana resubmitted its actuarial memorandum and Unified Rate Review Template, which included its plans to terminate all PPO plans, except the off-exchange Bronze PPO plan.
 4. On October 1, 2015, Humana sent its PPO policyholders the required notice that their policies would be discontinued, effective December 31. The notice included information on how the policyholder could contact Humana to find a replacement policy, but it did not include a specific offer of coverage.
 5. However, when they reached out to Humana after receiving their cancellation notice, some policyholders were told that the company was not offering any PPO plans in their geographic area.
 6. On November 9, 2015, TDI received a complaint from a Texas policyholder who had received a cancellation notice for her PPO policy. She had called Humana, as the letter directed, and a Humana representative had advised her that the only product available in her county was an HMO product that was sold by an affiliate company, Humana Health Plan of Texas, Inc.
 7. On November 16, 2015, Humana responded to TDI regarding the complaint and maintained that the Bronze PPO plan would continue to be offered off-exchange on a statewide basis.
 8. On November 20, 2015, the complainant and TDI both contacted the Humana number provided on the cancellation notice and were told that the Bronze PPO was not available in her county.
 9. On November 23, 2015, Humana informed TDI that the Bronze PPO plan was not available to all policyholders affected by the discontinuation, as had been previously promised. The Bronze PPO plan had not been sold in 26 Texas counties before the inception of the discontinuation strategy. Therefore, when policyholders from those counties contacted Humana seeking a replacement, it was not available as an option in Humana's system. Other than the Humana Bronze plan, no other PPO coverage was readily available in those 26 counties for 2016.
 10. Humana then initiated efforts to make the Bronze PPO plan available as an option in its system in those counties. Humana mailed notices dated December 11, 2015, to the affected policyholders, informing them of their new coverage option.
 11. Humana maintained a log of any affected policyholders and any other consumers from the 26 counties who called with interest in the Bronze PPO plan. Humana placed return calls to those individuals when it was able to quote these plans.

12. Per its original discontinuation letter, the original deadline to purchase coverage from Humana to be in place on January 1, 2016, was December 15, 2015. Similarly, enrollees shopping for coverage from other on-exchange carriers had to purchase coverage by December 15 to have it be effective January 1.
13. Humana extended the enrollment period in those 26 counties until March 1, 2016. Policyholders who chose to purchase this product during this extended enrollment were able to avoid lapses in coverage by requesting that Humana make the policy's effective date be January 1, 2016, even if the product was purchased after that date.
14. The sale of the Bronze PPO plan was not actually functional in those 26 counties until December 17, 2015, 15 days before the discontinuation effective date. In contrast, Texas insurance laws intend to provide enrollees 90 days to obtain new coverage after receiving a discontinuance.
15. Each of the 5,874 policyholders affected in the 26 counties received a second notice letter informing them that Bronze PPO was now available for a special extended enrollment period.
16. Failing to enroll policyholders until after the last day for them to maintain continuous coverage from other on-exchange carriers, arguably allowed Humana to avoid getting significant enrollment from the 26 counties in its PPO plan.

Failure to Timely Respond to Information Request

17. On August 31, 2017, TDI sent Humana a written request for information regarding this issue. Humana sought additional time to respond to the request, and TDI staff agreed. Humana was unable to provide the requested information by the agreed-upon, extended due date.

CONCLUSIONS OF LAW

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE chs. 82, 84, and 801; 28 TEX. ADMIN. CODE § 3.311; 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 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 any other individual hospital,

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medical or surgical insurance coverage offered by the insurer at the time of the discontinuation.

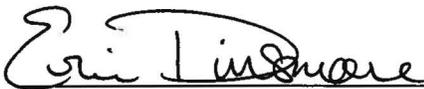
5. Humana violated TEX. INS. CODE § 38.001 by failing to timely respond to a reasonable inquiry in writing.

It is ordered that Humana Insurance Company must pay an administrative penalty of \$100,000 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

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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 was duly sworn by me and deposed as follows:

"My name is Joseph C. Ventura 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 Senior Vice President, Associate General Counsel & Corporate Secretary and am the representative of Humana Insurance Company. I am duly authorized by said organization to execute this statement.

Humana Insurance Company 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 August 1, 2018.

(NOTARY STAMP)



Signature of Notary Public

