

No. 2020-6419

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

**Date: 08/04/2020**

**Subject Considered:**

Superior HealthPlan, Inc.  
5900 East Ben White Blvd  
Austin, Texas 78741-7502

Consent Order  
TDI Enforcement File No. 21286

**General remarks and official action taken:**

This is a consent order with Superior HealthPlan, Inc. (SHP). TDI conducted a triennial quality of care examination and found multiple violations, including repeat violations found in a prior exam. SHP has agreed to pay a \$225,000 administrative penalty.

**Waiver**

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

**Findings of Fact**

1. The Texas Department of Insurance (TDI) issued SHP a basic service health maintenance organization (HMO) license number 94703, effective April 29, 1997.

2014 Triennial Examination

2. TDI conducted a triennial quality of care examination of SHP for the period beginning December 14, 2011, and ending December 31, 2014.

## **2020-6419**

Commissioner's Order  
Superior HealthPlan, Inc.  
Page 2 of 6

3. TDI issued the 2014 Triennial Final Examination Report on September 11, 2015.

### 2017 Triennial Examination

4. TDI conducted a triennial quality of care examination of SHP for the period beginning January 1, 2014, and ending December 31, 2017. Sample files reviewed during this examination were dated after the implementation of SHP's corrective action plan from the 2014 examination.
5. On November 29, 2018, TDI held an exit conference call with SHP to discuss the 2017 examination findings.
6. TDI issued the 2017 Triennial Final Examination Report on December 13, 2018.

### Prospective Adverse Determination Files

7. TDI reviewed 28 prospective adverse determination files to determine statutory compliance.
8. In 11 instances, SHP failed to provide the provider of record a reasonable opportunity to discuss the plan of treatment for the enrollee prior to issuing the adverse determination. This was similar to issues TDI identified in a 2014 examination of SHP.
9. In nine instances, SHP failed to provide the utilization review agent's (URA) telephone number so that the provider of record could contact the URA to discuss the pending adverse determination. This was similar to issues TDI identified in a 2014 examination of SHP.
10. In three instances, SHP failed to include notice of the independent review process with instructions that the form must be completed by the enrollee, an individual acting on behalf of the enrollee, or the enrollee's provider of record and that the release of medical information to the IRO must be signed by the enrollee or the enrollee's legal guardian. This was similar to issues TDI identified in a 2014 examination of SHP.

## 2020-6419

Commissioner's Order  
Superior HealthPlan, Inc.  
Page 3 of 6

### Prospective and Retrospective Appeal Adverse Determination Files

11. TDI reviewed 18 prospective and retrospective appeal adverse determination files to determine statutory compliance
12. In three instances, SHP failed to provide the provider of record a reasonable opportunity to discuss the plan of treatment for the enrollee prior to issuing the adverse determination. This was similar to issues TDI identified in a 2014 examination of SHP
13. In two instances, SHP failed to include notice of the independent review process with instructions that the form must be completed by the enrollee's provider of record and that the release of medical information to the IRO must be signed by the enrollee or the enrollee's legal guardian. This was similar to issues TDI identified in a 2014 examination of SHP.
14. In nine instances, SHP failed to include procedures for filing a complaint in the appeal resolution letters. This was similar to issues TDI identified in a 2014 examination of SHP.
15. In 15 instances, SHP issued appeal letters on its own letterhead. However, SHP is not a licensed URA.

### Corrective Action Plan

16. SHP submitted a plan of correction to address the deficiencies cited in the final examination report issued by TDI on May 25, 2018.

### **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, 401.055, 4201.101, and 4201.206; 28 TEX. ADMIN. CODE §§ 19.1703, 19.1704, 19.1709, 19.1710, and 19.1711, and TEX. GOV'T CODE §§ 2001.051-2001.178.
2. The commissioner has 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.

## 2020-6419

Commissioner's Order  
Superior HealthPlan, Inc.  
Page 4 of 6

3. SHP 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. SHP violated TEX. INS. CODE § 4201.206 and 28 TEX. ADMIN. CODE §§ 19.1703(b)(26), 19.1710, and 19.1711 because it failed to afford the provider of record a reasonable opportunity to discuss the plan of treatment for the enrollee prior to issuing the adverse determination.
5. SHP violated TEX. INS. CODE § 4201.206 and 28 TEX. ADMIN. CODE § 19.1710(1) because it failed to provide the URA's telephone number so that the provider of record could contact the URA to discuss the pending adverse determination.
6. SHP violated 28 TEX. ADMIN. CODE § 19.1709(b)(8) because it failed to include notice of the independent review process with instructions that the form must be completed by the enrollee's provider of record and that the release of medical information to the IRO must be signed by the enrollee or the enrollee's legal guardian.
7. SHP violated 28 TEX. ADMIN. CODE § 19.1711(a)(8)(H) because it failed to include procedures for filing a complaint in the appeal resolution letters.
8. SHP violated TEX. INS. CODE § 4201.101 and 28 TEX. ADMIN. CODE § 19.1704 because it issued appeal letters on its own letterhead without being a licensed URA.

### **Order**

It is ordered that Superior HealthPlan, Inc. must pay an administrative penalty of \$225,000 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" and sent to the Texas Department of Insurance, Attn: Enforcement, Division 60851, MC 9999, P.O. Box 149104, Austin, Texas, 78714-9104.

It is also ordered Superior HealthPlan, Inc. report to TDI on or before 30 days from the date of this order. The report will affirm that Superior HealthPlan, Inc. has fully implemented its post-exam corrective action plan. If Superior HealthPlan, Inc. has not yet fully implemented its post-exam corrective action plan, the report will detail how Superior

## 2020-6419

Commissioner's Order  
Superior HealthPlan, Inc.  
Page 5 of 6

HealthPlan, Inc. intends to fully implement its corrective action plan, resources dedicated to implementation, timelines, and a process for independent verification of objective progress to comply with Texas law. The report must be sent to EnforcementReports@tdi.texas.gov.

DocuSigned by:  
  
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Kent C. Sullivan  
Commissioner of Insurance

Recommended and reviewed by:



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Leah Gillum, Deputy Commissioner  
Enforcement Division



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Bev Rosendahl, Special Counsel  
Enforcement Division

**Affidavit**

**STATE OF** Texas §

§

**COUNTY OF** Travis §

Before me, the undersigned authority, personally appeared Mark D. Sanders, who being by me duly sworn, deposed as follows:

"My name is Mark D. Sanders. 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 and CEO, and am the authorized representative of Superior HealthPlan, Inc. and I am duly authorized by said organization to execute this statement.

Superior HealthPlan, Inc. 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."

  
Affiant

SWORN TO AND SUBSCRIBED before me on April 9, 2020.

(NOTARY SEAL)



  
Signature of Notary Public

Katelind Freeman  
Printed Name of Notary Public