

No. 08-0514

**OFFICIAL ORDER  
of the  
COMMISSIONER OF INSURANCE  
of the  
STATE OF TEXAS  
AUSTIN, TEXAS**

Date: JUN 13 2008

**Subject Considered:**

BLUE CROSS AND BLUE SHIELD OF TEXAS,  
A DIVISION OF HEALTH CARE SERVICE CORPORATION  
300 East Randolph Street  
Chicago IL 60601

**CONSENT ORDER  
DISCIPLINARY ACTION**  
TDI Enforcement Case No. 50448

**General remarks and official action taken:**

On this date came on for consideration by the Commissioner of Insurance, the Texas Department of Insurance ("TDI") complaint against Blue Cross and Blue Shield of Texas, a division of Health Care Service Corporation ("BCBSTX"). TDI alleges and BCBSTX denies that BCBSTX violated the insurance laws of the State of Texas. It is further alleged that such conduct constitutes grounds for disciplinary action pursuant to TEX. INS. CODE ANN. §§ 82.051-82.055 and 84.021-84.044.

TDI, by and through its counsel, and BCBSTX, by and through its duly authorized representative, by their respective signatures hereto, have announced that they have resolved this matter and have agreed, pursuant to TEX. INS. CODE ANN. § 82.055 and TEX. GOV'T CODE ANN. § 2001.056 to the entry of this Consent Order. TDI and BCBSTX further request the Commissioner of Insurance to informally dispose of the issues set forth in this Order pursuant to the provisions of TEX. INS. CODE ANN. § 82.055 and TEX. GOV'T CODE ANN. § 2001.056. BCBSTX has waived certain rights and has agreed not to contest findings of fact and conclusions of law as indicated by the signature of its duly authorized representative on this Consent Order.

## JURISDICTION

The Commissioner has jurisdiction over this matter pursuant to the TEX. INS. CODE ANN. §§ 82.051-82.055, 84.021-84.044, 801.051 – 801.053, and 982.113.

## WAIVER

BCBSTX acknowledges the existence of certain rights provided by the Texas Insurance Code and other applicable laws, including the right to the issuance and service of a notice of hearing, a public hearing, a proposal for decision, rehearing by the Commissioner and judicial review. BCBSTX waives all of these rights, as well as any other procedural rights that might otherwise apply, in consideration of the entry of this Consent Order.

## FINDINGS OF FACT

The Commissioner makes the following findings of fact:

1. BCBSTX is a foreign accident and health company and health maintenance organization currently holding a certificate of authority issued by TDI to transact the business of insurance pursuant to TEX. INS. CODE ANN. §§ 801.051 – 801.053, 843.082, and 982.113.
2. BCBSTX preferred provider health insurance plans generally provide a higher level of benefits to consumers who receive health care services from facilities contracted with BCBSTX either as “preferred” or “participating” facilities. Under the terms of most BCBSTX plans, if consumers receive services from uncontracted facilities, consumers not only generally receive a lower “percentage” level of benefits, but BCBSTX also pays the facilities based upon an “allowed” amount which TDI has alleged is not adequately defined in the policy. BCBSTX denies this allegation. Uncontracted facilities are entitled to bill consumers for any difference between the facility’s billed charge and the amount reimbursed by BCBSTX.
3. TDI has received complaints that BCBSTX has set its “allowable” amounts for uncontracted facilities at unreasonably low rates that are less than the amounts billed by facilities and also less than the rates paid to BCBSTX contracted facilities. TDI has alleged that BCBSTX’s reimbursement rates are unreasonably low in light of representations made by the company in its advertising and its policies and that the reimbursement rates are so low as to violate Texas insurance laws and regulations. BCBSTX denies these allegations.

4. TDI has received complaints that the BCBSTX website listing of its contracted providers has listed providers as being contracted when they were not contracted.
5. Pursuant to TEX. INS. CODE ANN. § 82.055(b), BCBSTX agrees to the entry of this Order with the reservation it does not admit a violation of Texas law or regulations and that the existence of a violation is in dispute.
6. In order to resolve this matter, BCBSTX has agreed to take the following actions:
  - A. BCBSTX has presented TDI with a proposed new methodology for its payment of certain categories of claims by uncontracted facilities going forward.
  - B. In accordance with its proposal, on or before 60 days from the date of this Order, BCBSTX will implement changes to its payment methodology for uncontracted facilities. BCBSTX uncontracted reimbursement methodologies will be based on identification of services consistent with standards set forth by the Centers for Medicare and Medicaid Services. BCBSTX will ensure that reimbursements reasonably reflect the seriousness of the treatment or condition, regional variations in the costs of providing care, and the cost of medical supplies. BCBSTX will not reimburse uncontracted facilities using methodologies based upon data more than five years old.
  - C. On or before 180 days from the date of this Order, BCBSTX will issue notices to current and former insureds and certificate holders with facility claims for services rendered by uncontracted facilities with dates of services from January 1, 2004, to the date BCBSTX implements the changes described in 6(B), above. However, notices are not required to be issued under this section if the difference between the amount payable by BCBSTX under its original final adjudication and the amount payable by BCBSTX under the methodologies discussed in 6(B), above, is less than \$85.00. Notices are also not required to be issued under this section where BCBSTX applied an out of network coinsurance percentage to the claim, unless application of an in network coinsurance was required because services were not available through a network facility under TEX. INS. CODE ANN. § 1301.005 or because the claim involved emergency care under TEX. INS. CODE ANN. § 1301.155.
  - D. The notices described in 6(C), above, will be sent to the insured's or certificate holder's last known address and the envelopes shall request both forwarding and address correction. The notices shall provide a statement, agreed upon with TDI, that BCBSTX will (upon receipt of proof

of payment) reconsider the amount allowed for uncontracted facility services.

- E. BCBSTX may require that insured's claims and reasonable proof of payment be filed with BCBSTX within a reasonable time not less than four months from the date notice was mailed to the insured. BCBSTX shall permit reasonable extensions of time for production of acceptable proof of payment after claims are filed.
- F. For claims of insureds and certificate holders receiving notices under 6(C), above, within 60 days of receipt of acceptable proof of payment by an insured, BCBSTX shall readjudicate the claim and issue payment to the insured for any amounts paid by the insured which would not be the insured's responsibility under the BCBSTX reimbursement methodology in place at the time of the readjudication, including the methodology implemented under 6(B), above.
- G. Within six months of the date of this Order, BCBSTX shall file with TDI amendments to its policies and contracts of insurance as may be necessary to remove confusing or unclear language regarding its reimbursement of uncontracted facilities. Beginning no later than 30 days of receipt of approval of policy forms, BCBSTX shall issue the revised language to its insureds upon renewal of their policies.
- H. If, in the two years following the date of this Order, BCBSTX raises its rates on any health insurance policy in Texas, it must file with TDI a certification by an actuary that the rate increase was not based in whole or in part upon the restitution imposed by this Order.
- I. BCBSTX will pay the sum of \$250,000.00 to the State of Texas within 30 days of the date of this Order.
- J. On or before 16 months from the date of this Order, BCBSTX shall file a report with TDI detailing the amount of restitution paid under this Order, including the number and total amount of claims filed (separating insured claims from any other payments reported), the number and amount of payments made, and the number and amount of claims denied. BCBSTX shall provide TDI with a listing of the identification numbers of insureds and certificate holders whose claims were denied, the amount of the claims, any amounts paid by BCBSTX less than the full amount requested, and a statement of the basis for the denial. The report will be sent to the Texas Department of Insurance, Attn.: Catherine Bell, Enforcement Division, MC110-1A, P.O. Box 149104, Austin, Texas 78714. TDI will be allowed to audit the accuracy of the claims payment process.

- K. If, at the time of filing the report under Finding of Fact 6(J), BCBSTX has paid less than \$3,900,000.00 in restitution pursuant to this order, BCBSTX shall pay at the time of filing the report an additional amount to the State of Texas equal to the difference between the restitution paid and \$3,900,000.00. Payment of such additional amount at that time does not impact the obligation of BCBSTX under this Order to make restitution payments.
  - L. BCBSTX will take corrective actions to improve the accuracy of the provider information on its webpages.
7. The entry of this Order does not constitute a finding by TDI that the revised reimbursement methodology for uncontracted facilities described in 6(B), above, provides for payments which are "usual," "reasonable," or "customary."

## CONCLUSIONS OF LAW

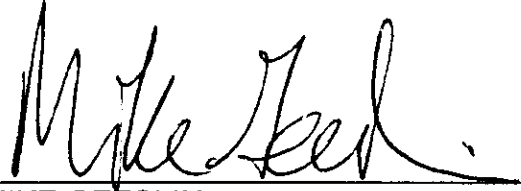
Based upon the agreement of the parties and the foregoing findings of fact, the Commissioner of Insurance makes the following conclusions of law:

1. The Commissioner has jurisdiction over this matter pursuant to the TEX. INS. CODE ANN. §§ 82.051-82.055, 84.021-84.044, 801.051 – 801.053, 982.113.
2. The Commissioner of Insurance has authority to informally dispose of this matter as set forth herein under TEX. INS. CODE ANN. § 82.055 and TEX. GOV'T CODE ANN. § 2001.056.
3. BCBSTX 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 hearing, a public hearing, a proposal for decision, rehearing by the Commissioner of Insurance, and judicial review.
4. BCBSTX violated TEX. INS. CODE ANN. §§ 1301.005 and 1301.006 and 28 TEX. ADMIN. CODE §§ 3.3703-3.3704 by failing to make non-preferred benefits reasonably available to its insureds.
5. BCBSTX violated TEX. INS. CODE ANN. § 1301.1591 by failing to maintain an accurate listing of its preferred providers.

IT IS THEREFORE ORDERED by the Commissioner of Insurance that BCBSTX shall comply with the requirements set forth in Finding of Fact No. 6.

IT IS FURTHER ORDERED by the Commissioner of Insurance that BCBSTX shall pay the State of Texas the sum of \$250,000.00. Payment must be paid on or before 30 days from the date of this Order by cashier's check or money order made payable to

"State of Texas" and transmitted to the Texas Department of Insurance, Attn: Enforcement Division 1111, MC 9999, P.O. Box 149104, Austin, Texas 78714-9104. Additionally, if, under the terms of this Order, BCBSTX pays less than \$3,900,000.00 in restitution in the 16 months from the date of this Order, BCBSTX shall pay an additional amount equal to the difference between the amount of restitution paid and \$3,900,000.00. Payment of any secondary amount must be paid on or before 16 months from the date of this Order by cashier's check or money order made payable to "State of Texas" and transmitted to the Texas Department of Insurance, Attn: Enforcement Division 1111, MC 9999, P.O. Box 149104, Austin, Texas 78714-9104.

  
MIKE GEESLIN  
COMMISSIONER OF INSURANCE

APPROVED AS TO FORM AND CONTENT:

  
DOUG DANZEISER  
TEXAS DEPARTMENT OF INSURANCE

