

No. **2022-7656**

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

**Date: 12/05/2022**

**Subject Considered:**

Memorial Hermann Health Insurance Company  
Memorial Hermann Commercial Health Plan, Inc.  
929 Gessner Rd, Ste 1500  
Houston, Texas 77024-2675

Consent Order  
TDI Enforcement File Nos. 29200 & 29201

**General remarks and official action taken:**

This is a consent order with Memorial Hermann Health Insurance Company and Memorial Hermann Commercial Health Plan, Inc., collectively Memorial Hermann. The department conducted a desk audit of Memorial Hermann which revealed violations of the Texas Insurance Code and Texas Administrative Code. Memorial Hermann has agreed to pay an administrative penalty of \$125,000.

**Waiver**

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

# 2022-7656

Commissioner's Order

Memorial Hermann Health Insurance Company

Memorial Hermann Commercial Health Plan, Inc.

Page 2 of 6

## Findings of Fact

### Licensure and Background

1. The department issued Memorial Hermann Health Insurance Company (Memorial Insurance) certificate of authority number 95542 to act as a life, accident, or health insurer, effective January 2, 2001.
2. The department issued Memorial Hermann Commercial Health Plan, Inc. (Memorial Commercial) a basic health maintenance organization (HMO) certificate, number 13765811, effective September 28, 2018.
3. The department conducted a desk audit of adverse determinations issued by or on behalf of Memorial Hermann for the period of July 1, 2020, through June 30, 2021.
4. Memorial Hermann used the following Texas certified utilization review agents (URA) to issue adverse determinations and authorizations on its behalf during the scope of the audit:
  - a. OptumRX, Inc., license number 1786574;
  - b. Navitus Health Solutions, LLC, license number 1762611; and
  - c. Memorial Hermann Health Solutions, Inc., license number 2488290.
5. Memorial Hermann terminated its contract with OptumRX, Inc., on December 31, 2020, and provided proof of termination. Navitus Health Solutions, LLC took over pharmacy utilization review on January 1, 2021.
6. OptumRX, Inc. was the subject of a department investigation, and was issued Consent Order 2018-5634 on September 18, 2018, for similar violations found in the Memorial Hermann audits.

### Adverse Determination Files for Memorial Insurance

7. The department reviewed 33 of Memorial Insurance's adverse determination files for the audit: 20 pharmacy; 11 medical/surgical; one behavioral health; and one experimental and/or investigational.

## 2022-7656

Commissioner's Order

Memorial Hermann Health Insurance Company

Memorial Hermann Commercial Health Plan, Inc.

Page 3 of 6

8. In 58% of the files (19 of 33), Memorial Insurance's URA failed to issue TDI approved template letters.
9. In 33% of the files (11 of 33), Memorial Insurance's URA failed to include required forms for the member or provider to request an independent review of the adverse determination.
10. In 33% of the files (11 of 33), Memorial Insurance's URA failed to include language describing an enrollee's right to an immediate and expedited review by an independent review organization for emergency care, continued hospitalization, life-threatening condition, or provision of prescription drugs or intravenous infusions for which the patient is receiving benefits.
11. In 42% of the files (14 of 33), Memorial Insurance's URA failed to afford the provider of record a reasonable opportunity to discuss the plan of treatment for the enrollee with a physician prior to the issuance of the adverse determination.

### Adverse Determination Files for Memorial Commercial

12. The department reviewed 30 of Memorial Commercial's adverse determination files for the audit: 20 pharmacy; five medical/surgical; three behavioral health; and two experimental and/or investigational.
13. In 50% of the files (15 of 30), Memorial Commercial's URA failed to issue TDI approved template letters.
14. In 13% of the files (4 of 30), Memorial Commercial's URA failed to afford the provider of record a reasonable opportunity to discuss the plan of treatment for the enrollee with a physician prior to the issuance of the adverse determination.
15. There were no findings related to medical/surgical, behavioral health, or experimental and/or investigational.

### Corrective Action Plan

16. Memorial Hermann submitted a corrective action plan to the department on February 28, 2022.

## 2022-7656

Commissioner's Order

Memorial Hermann Health Insurance Company

Memorial Hermann Commercial Health Plan, Inc.

Page 4 of 6

17. Identification of the incorrect TDI letter template usage was made on December 16, 2021, during the audit.
18. Upon identification, Memorial Hermann's URA, Navitus, provided a TDI-approved template to Memorial Hermann for review and approval. The approved letter was added to production on December 20, 2021. Navitus has implemented an annual audit of TDI letter templates to ensure ongoing compliance.
19. Starting in 2022, Memorial Hermann began reviewing a sample of adverse determinations quarterly to ensure statutory compliance. Likewise, as part of the pharmacy benefits manager oversight and monitoring activities, Memorial Hermann has included a review of TDI approved letters as part of its annual readiness review.

### Conclusions of Law

1. The commissioner has jurisdiction over this matter under TEX. INS. CODE §§ 82.051–82.055, 84.021–84.044, 801.001 *et seq.*, 841.001 *et seq.*, and 843.001 *et seq.*, and 28 TEX. ADMIN. CODE §§ 3.1 *et seq.* and 19.1 *et seq.*
2. The commissioner has the 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.
3. Memorial Hermann 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. Memorial Hermann violated TEX. INS. CODE § 4201.303 and 28 TEX. ADMIN. CODE § 19.1709 because its utilization review agent failed to issue TDI approved template letters when notifying enrollees of an adverse determination.
5. Memorial Hermann violated TEX. INS. CODE §§ 4201.303 and 4201.357, and 28 TEX. ADMIN. CODE § 19.1709 because its utilization review agent did not identify the procedures for filing a complaint and appeal, did not identify the procedures to request

# 2022-7656

Commissioner's Order  
Memorial Hermann Health Insurance Company  
Memorial Hermann Commercial Health Plan, Inc.  
Page 5 of 6

immediate review by an independent review organization, and did not identify the procedures for filing an expedited appeal of an adverse determination.

6. Memorial Hermann violated TEX. INS. CODE § 4201.456 and 28 TEX. ADMIN. CODE § 19.1710 by failing to afford the provider of record a reasonable opportunity to discuss the plan of treatment for the enrollee with a physician prior to the issuance of the adverse determination.

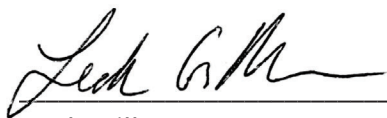
## Order

It is ordered that Memorial Hermann Health Insurance Company and Memorial Hermann Commercial Health Plan, Inc. jointly pay an administrative penalty of \$125,000 within 30 days from the date of this order. The administrative penalty must be paid as instructed in the invoice, which the department will send after entry of this order.

DocuSigned by:  
  
FC5D7EDDFFBB4F8...

Cassie Brown  
Commissioner of Insurance

Recommended and reviewed by:



Leah Gillum, Deputy Commissioner  
Fraud and Enforcement Division



Stephanie Daniels  
Enforcement

