

No. 2020-6390

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

**Date: 07/10/2020**

**Subject Considered:**

UnitedHealthcare Insurance Company  
185 Asylum Street  
Hartford, Connecticut 06103

Consent Order  
TDI Enforcement File No. 12351

**General remarks and official action taken:**

This is a consent order with UnitedHealthcare Insurance Company (UHC) regarding the payment and recoupment of claims for medical services provided by surgical assistants in Texas. UHC has agreed to pay a \$150,000 administrative penalty.

**Waiver**

UHC acknowledges that the Texas Insurance Code and other applicable law provide certain rights. UHC 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), UHC agrees to this consent order with the express reservation that it does not admit to a violation of the Texas Insurance Code or of a rule of the Texas Department of Insurance (TDI), and that the existence of a violation is in dispute.

**Findings of Fact**

1. TDI certified UHC, company ID No. 1348, as a life, accident, or health insurer effective November 6, 1972.

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### Order No. 2014-3686

2. In February 2014, TDI began receiving complaints that UHC was inappropriately denying claims for medical services provided by Texas licensed surgical assistants (a specific type of non-physician acting and billing as assistant at surgery).
3. UHC determined the improper denials were caused by its implementation of a nationwide system edit related to assistant at surgery services that did not properly recognize the requirements in Chapter 1451 of the Texas Insurance Code related to reimbursement for Texas licensed surgical assistants.
4. In Official Order of the Texas Commissioner of Insurance No. 2014-3686 (2014 Order), UHC agreed to reprocess all improperly denied claims and developed procedures to address its underlying system issue. The 2014 Order included an 18% annual interest penalty payment for claims denied in violation of Texas insurance laws and a \$10,000 administrative penalty.
5. After reprocessing the claims, UHC provided TDI evidence of payments made to providers that were consistent with the 2014 Order.

### UHC's System Limitations and Recoupment Procedure

6. After the 2014 Order, UHC updated its system to stop improperly denying claims for medical services provided by Texas surgical assistants as required by the 2014 Order. UHC did not fully automate processing so that surgical assistant claims were auto-adjudicated with the appropriate payment amounts.
7. Providers use medical billing codes similar to lead surgeons when filing claims with insurers for surgical assistant services. To distinguish the level of work performed by the lead surgeon versus the surgical assistant, a provider uses the applicable CPT modifier for assistant at surgery services that identifies the services provided by the surgical assistant. UHC makes use of the modifier presented on the claim to determine the allowable rate for the specific medical service provided.
8. Although UHC's use of the assistant at surgery modifier on claims went into effect in 1999, UHC's system did not electronically apply it to all claims until January 2017. Therefore, for years, UHC applied the assistant at surgery modifier through manual procedures, when not applied electronically.

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9. UHC did not have the staffing resources necessary to manually process all claims from licensed surgical assistants before the applicable payment deadlines. To address this, in August 2014, UHC used a process that allowed some claims to be manually processed using the modifier before initial payment and the remaining claims were initially paid in a manner that UHC considered to be a potential overpayment of the claims. UHC determined it would retrospectively recoup any overpayments once UHC was able to manually process those claims using the modifier approach it considered to be appropriate for the claim.
10. The scope of the recoupment procedure included claims with process dates from March 2014 to January 2017.
11. The recoupment procedure reviewed over 8,000 claims. UHC recouped payment from over 1,600 claims, totaling over \$17.5 million dollars in recouped funds.

### UHC's Continuing Problems with the Processing of Surgical Assistant Claims

12. In December 2015, UHC experienced problems with its manual processing, which caused the recoupment procedure to become backlogged. The backlog caused providers to either receive recoupment notices or have an amount recouped by UHC long after UHC paid the claim. UHC ultimately recouped many claims over a year after the provider received the initial payment, with the longest period being 23 months later.
13. UHC never communicated its system limitations or planned recoupment procedure to providers. Instead, UHC told providers that while it made efforts to process their claims accurately, errors had occurred. It was inaccurate to qualify the unmodified payments as errors since they were part of UHC's planned recoupment procedure.
14. UHC modified specific elements of its recoupment procedure six times between 2014 and 2017. As the procedure changed, the employees doing the manual review occasionally made errors and applied new, less favorable terms to the claims, instead of the terms in place on the date of service. This caused additional confusion to providers and resulted in similar claims being handled differently.
15. During the recoupment procedures, many claims went through the payment and recoupment cycle more than once. This caused providers to receive multiple notices stating different "corrected" payment rates.

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16. Eleven of the claims reprocessed during UHC's recoupment procedure were addressed in the 2014 Order. Therefore, UHC recouped payment amounts from claims it had been ordered to pay with interest. UHC acknowledges the error in including those claims in the recoupment process and reprocessed them pursuant to requirements in the 2014 Order.
17. In January 2017, UHC had finalized its system update and ceased its recoupment procedure. Since then, UHC represents that it processed all new surgical assistance claims with the modifier electronically. UHC continues to monitor claims to ensure the system is processing these claims accurately.

### Conclusions of Law

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE chs. 82, 84, 541, 542, 801, and 1301; 28 TEX. ADMIN. CODE § 21.203; 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. UHC 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. UHC violated TEX. INS. CODE § 542.003(b)(4) and 28 TEX. ADMIN. CODE § 21.203(4) by failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim with respect to which the insurer's liability has become reasonably clear.
5. UHC violated TEX. INS. CODE § 542.003(b)(3) and 28 TEX. ADMIN. CODE § 21.203(15), by failing or refusing to pay a claim without conducting a reasonable investigation with respect to the claim.
6. UHC violated TEX. INS. CODE § 1301.132 by providing written notices of overpayments to physicians or providers that did not include accurate bases and specific reasons for the request of the recovery of funds.

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## Order

It is ordered that UnitedHealthcare Insurance Company cease and desist from continuing any unlawful or deceitful practice in connection with the business of insurance.

It is ordered that UnitedHealthcare Insurance Company must pay an administrative penalty of \$150,000 within 30 days from the date of this order. The penalty must be paid by company check, cashier's check, or money order made payable to the "State of Texas" and transmitted to the Texas Department of Insurance, Attn: Enforcement Division, Division 60851, MC 9999, P.O. Box 149104, Austin, Texas, 78714-9104.

DocuSigned by:  
  
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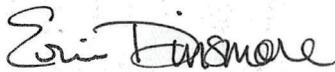
Kent C. Sullivan  
Commissioner of Insurance

Recommended and reviewed by:



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Leah Gillum, Deputy Commissioner  
Enforcement Division



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Erin Dinsmore, Staff Attorney

