

No. **2021-6985**

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

Date: 09/14/2021

Subject Considered:

Imperial Insurance Companies, Inc.
600 S Lake Ave Ste 308
Pasadena, California 91106-3955

Consent Order
TDI Enforcement File No. 27507

General remarks and official action taken:

Imperial Insurance Companies, Inc. (Imperial) has acted outside the scope of its authority by engaging in the acts of a health maintenance organization (HMO) for more than three years, since its inception as an accident and health insurer in Texas. Imperial offered HMO products in Texas and misrepresented itself as an HMO to Texas consumers, health care providers, the federal government, and department staff. To achieve compliance, Imperial has applied to the department to expand its existing authority to include HMO. This order grants that application subject to additional terms detailed in this order, including the continuation of certain financial requirements previously ordered in Commissioner Order No. 2018-5462. Simultaneously, this order permanently suspends Imperial's authority to act as an accident and health insurer, and revises Order No. 2018-5462 to correct a clerical error nunc pro tunc. Imperial also agrees to hire a statutory accountant and to pay an administrative penalty of \$500,000.

Waiver

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

Findings of Fact

Background and Licensure

1. On April 13, 2018, in Commissioner Order No. 2018-5462, Imperial's certificate of authority was granted by consent under its former name, Imperial Insurance Company of Texas, Inc. Although the first finding of fact in that order states that Imperial proposed to write health and accident coverage, Order No. 2018-5462 specifically granted Imperial authority to write "life insurance."
2. Despite this error, the department's records show Imperial is a domestic insurance company which was issued a certificate in 2018 authorizing it to transact accident and health business in Texas.
3. Imperial is affiliated with Imperial Health Plan of California, Inc. and Imperial Health Holdings, A Professional Medical Corporation. Imperial and its affiliates are owned by a single shareholder.
4. Imperial does not have HMO authority in Texas and does not qualify for an exception or exemption to HMO licensure.

Imperial's Contract with CMS

5. Simultaneous with receipt of its Texas certificate of authority in April 2018, Imperial applied to the Centers for Medicare and Medicaid Services (CMS) to offer Medicare Advantage products in Texas for calendar year 2019.
6. As part of its CMS application, Imperial attested it was an indemnity company in Texas applying to offer preferred provider organization (PPO) plans. As part of the application process, the department certified Imperial's certificate of authority and confirmed solvency.
7. However, during the application process, Imperial then made HMO product selections for its proposed Texas offerings through CMS' electronic portal. Imperial specifically selected: a "Traditional" HMO plan (003); an HMO Dual Special Needs plan (D-SNP 004); and an HMO Chronic Special Needs plan (C-SNP 005).

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8. CMS awarded the 2019 contract approving Imperial's proposal to offer HMO plans in Texas. Imperial also applied to CMS in subsequent years and was awarded similar HMO contracts for calendar years 2020 and 2021.
9. Indeed, in 2019, during the renewal process for calendar year 2020, Imperial staff even added a fourth product selection through CMS' portal, selecting a "Traditional Plus" HMO plan (007) that included Part D prescription drug coverage.
10. The CMS contract renewals for calendar years 2020 and 2021 effectively renewed all of Imperial's existing HMO product selections.

Texas Operations, Advertising, and Representations to TDI

11. After being awarded the 2019 CMS contract, Imperial began exclusively offering HMO Medicare Advantage plans in Texas, even though it had no authority to do so.
12. Imperial offered Texans its Traditional HMO, C-SNP, and D-SNP Medicare Advantage plans in 15 counties throughout Texas.¹
13. For calendar years 2019 – 2021, Imperial enrolled a total of 810 Texans in these three HMO plans, including 229 lives in 2019, 185 lives in 2020, and 396 lives in 2021.
14. Texas enrollees were provided with plan documentation expressly identifying and describing Imperial's products as HMO plans. The documents included, but were not limited to, Imperial's enrollment kit, evidence of coverage, benefits summary, and benefits highlights.
15. The plan documents included specific representations that insureds would be required to obtain a primary care physician (PCP) referral to see specialists, including podiatrists, and that certain services may require referral or pre-authorization. Plan documents also state that insureds are required to use network providers to get medical care and services, and that the only exceptions are: emergencies; urgently needed services when Imperial's network is not available;

¹ Imperial represents it did not enroll any Texans in the "Traditional Plus" HMO (007) plan, and that only persons outside Texas were offered or enrolled in that plan.

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out-of-area dialysis services; and, in cases when Imperial authorizes out-of-network providers.

16. Imperial's website also advertises and describes its Medicare Advantage product offerings in Texas as HMO plans and includes downloadable HMO plan documents.
17. In August 2020, the department received a complaint from a Texas consumer enrolled in Imperial's traditional HMO Medicare Advantage plan. The consumer complained she did not have access to care, specifically that she could not locate a "listed" PCP within her area who would see her, and also contended she could not obtain a necessary referral to see a specialist and obtain a medication prescription.
18. In response to the complaint, Imperial informed the department: "We are a Medicare Advantage Prescription Drug Plan with an HMO." Further, Imperial stated that the complaining insured would not be able to see a specialist without a referral from her PCP, admitting to the department, "this is the HMO Managed Care Model."
19. Imperial informed the department it accommodated the complaining insured by retroactively assigning her chosen PCP and assisting her by attempting to schedule a PCP appointment for the insured "to get the authorization to see the specialist."
20. Imperial's "direct referral form," which it provides to Texas providers making member referrals, states Imperial "requires a copy of this direct referral form to be submitted with the claim for payment. Services must be rendered by an Imperial Insurance Companies [*sic*] contracted provider."
21. Imperial's documentation, statements, and admissions demonstrate it has been functionally operating in Texas as an HMO because: (1) it has a closed network requiring that its enrolled members must first see a "listed" PCP in order to have coverage and obtain referrals; and (2) referrals are limited to authorized, in-network providers.

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Application for HMO Authority

22. On March 8, 2021, after communications from the Arizona Department of Insurance, Imperial contacted CMS to attempt to change its HMO contract to a PPO contract, but was unsuccessful.
23. On March 17, 2021, Imperial submitted an application to the department seeking to expand its certificate of authority to allow it to operate as an HMO in Texas. That application is being resolved through this consent order.

Mitigating Circumstances

24. Imperial represents its affiliate, Imperial Health Plan of California, Inc., operates as an HMO in the state of California and that many of Imperial's and its affiliate's employees overlap and split their time working for both Imperial and its California affiliate.
25. In 2018 when its initial CMS application was submitted, Imperial contends its contracting team was led by an Imperial employee and a consultant, both of whom no longer work for Imperial.
26. Imperial represents that these persons involved in making the initial CMS applications and product selections, as well as the staff that renewed those selections did so in error, not knowing Imperial was not authorized to operate as an HMO in Texas. After the initial HMO product selections were erroneously made, the evidence of coverage documents were automatically generated to include HMO references.
27. Thereafter, Imperial affirms that its entire operations staff, including legal advisors, claims handling staff, and compliance management, mistakenly believed Imperial was an HMO and erroneously assumed the HMO designation was accurate because its California affiliate also had an HMO contract with CMS.
28. On July 19, 2021, Imperial hired a person to act as both general counsel and chief legal officer to oversee all of its regulatory filings and compliance matters, including licensing. This officer will also oversee Imperial's compliance staff, administer employee training to current and future staff on the differences between health insurers and HMOs, and will manage CMS related matters.

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Continuation of Financial Requirements

29. When Imperial's certificate authority as an accident and health insurer was granted on April 13, 2018, in Commissioner Order No. 2018-5462, Imperial consented to certain financial requirements for three years.
30. Imperial voluntarily agrees to continue and extend the following requirements from that order. Imperial agrees that for three years from the date of this order:
 - a. Imperial will not file with the commissioner an application for substitution or withdrawal of the special deposit that it previously made pursuant to TEX. INS. CODE § 406.006 and the terms of Commissioner Order No. 2018-5462;
 - b. Imperial must limit its gross premium writings to surplus to a leverage ratio of 7:1; and
 - c. Imperial must maintain risk-based capital (RBC) of 400%, and must review and electronically report to the department its RBC calculation on a quarterly basis. If capital and surplus fall below this level of funding, Imperial must infuse additional capital to meet or exceed the 400% RBC threshold.
31. Since its admission in Texas, Imperial has also had some challenges in meeting financial statement filing deadlines. To address those challenges, Imperial voluntarily agrees to hire and maintain on its permanent staff, a statutory accountant to better enable it to timely adhere to financial statement filing deadlines.

Conclusions of Law

1. The commissioner has jurisdiction over this matter under TEX. INS. CODE §§ 82.051 – 82.055, 84.021 – 84.044, 101.001 *et seq.*, 406.001, *et seq.*, 541.001 *et seq.*, 801.051-801.054, 801.101–801.102, 841.002, 841.101, 841.701-841.702, and 843.001 *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.

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3. Imperial 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. Imperial violated TEX. INS. CODE §§ 101.102 and 843.071 – 843.072, by engaging in operations of a health maintenance organization in this state without obtaining a certificate of authority to do so, and further, by using the phrases "health maintenance organization" and "HMO" in the course of its insurance operations, plan documents, publications, and advertisements, without obtaining an HMO certificate of authority.
5. Imperial violated TEX. INS. CODE § 841.257(1) by accepting risks and writing HMO policies which it was not authorized to accept or write.
6. Imperial violated TEX. INS. CODE §§ 541.003, 541.052, and 541.061(1)-(3) by making, publishing, disseminating, circulating, and placing before the public advertisements and statements containing untrue, deceptive, or misleading assertions, representations, and statements in its conduct of insurance business, including: making untrue statements of material facts; failing to state material facts necessary to make other statements not misleading, consider the circumstances under which the statements were made; and, making statements in a manner that would lead reasonably prudent persons to false conclusions of material fact.
7. Imperial has complied with the requirements in TEX. INS. CODE § 843.082 for approval of the application to expand its authority to include HMO.
8. The commissioner of insurance has plenary power to correct an order which contains a clerical error due to inadvertence or mistake at any time by the entry of a nunc pro tunc order. Correction of a clerical error is not a substantive change in the order. *In re Ward*, 137 S.W.3rd 910, 913 (Tex. App.-Texarkana 2004, no pet.).

Order

To correct the clerical error in Commissioner Order No. 2018-5462, dated April 13, 2018, it is ordered that the certificate of authority granted to Imperial Insurance Companies, Inc. was granted in 2018 consistent with the department's records, to include only accident and health insurance authority, and not life insurance. Entry of this nunc pro tunc

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correction does not in any way nullify or supersede the findings of fact, conclusions of law, or sanctions imposed in Commissioner Order No. 2018-5462.

It is ordered that Imperial's present authority to operate as an accident and health insurer in Texas is now permanently suspended. This suspension remains in place until the commissioner finds that Imperial is able to demonstrate competency to comply with the law and operate as an accident and health insurer in Texas.

It is further ordered that Imperial's application for authority to operate as a health maintenance organization in Texas is granted, subject to the following conditions:

- a. Imperial must comply and operate in accordance with Chapter 843, Texas Insurance Code, and all other law applicable to HMOs.
- b. An application for substitution or withdrawal of the special deposit previously made by Imperial pursuant to TEX. INS. CODE § 406.006 and the terms of Commissioner Order No. 2018-5462, may not be filed with the commissioner until three years from the date of this order or later.
- c. Within 90 days from the date of this order, Imperial must hire and maintain on its permanent staff, a qualified employee with statutory accounting experience to make its financial statement filings. No alternative methods for fulfilling the statutory accounting position are acceptable to the commissioner. Imperial must electronically submit to the department the biographical information for the hired employee.
- d. For three years from the date of this order, Imperial must limit its gross premium writings to surplus to a leverage ratio of 7:1.
- e. For three years from the date of this order, Imperial must maintain risk-based capital (RBC) of 400%. Imperial must review and electronically report to the department its RBC calculation on a quarterly basis for three years from the date of this order. If capital and surplus fall below this level of funding, Imperial must infuse additional capital to meet or exceed the 400% RBC threshold.
- f. All information required to be submitted to the department under the terms of this order must be sent electronically to financialanalysis@tdi.texas.gov.

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It is further ordered that Imperial Insurance Companies, Inc. pay an administrative penalty of \$500,000 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:

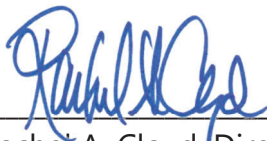

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Cassie Brown
Commissioner of Insurance

Recommended and reviewed by:



Leah Gillum, Deputy Commissioner
Enforcement Division



Rachel A. Cloyd, Director
Enforcement Division

Affidavit


STATE OF CALIFORNIA §
COUNTY OF SACRAMENTO §

Before me, the undersigned authority, personally appeared MICHAEL G. POLIS, who being by me duly sworn, deposed as follows:

"My name is MICHAEL G. POLIS. 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 GENERAL COUNSEL AND CHIEF LEGAL OFFICER and am the authorized representative of Imperial Insurance Companies, Inc. I am duly authorized by said organization to execute this statement.

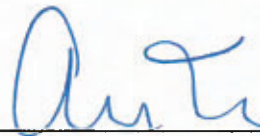
Imperial Insurance Companies, Inc. has knowingly and voluntarily entered into the foregoing consent order and agrees with and consents to the issuance and service of the same by the commissioner of insurance of the state of Texas."



Affiant

SWORN TO AND SUBSCRIBED before me on SEPTEMBER 8, 2021.

(NOTARY SEAL)



Signature of Notary Public

ARICA J. TORRES

Printed Name of Notary Public