

No. 2023-8290

**Official Order
of the
Texas Commissioner of Workers' Compensation**

Date: 10/16/2023

Subject Considered:

Accident Fund Insurance Company of America
PO Box 40790
Lansing, Michigan 48901-7990

Consent Order
DWC Enforcement File Nos. 32545, 32546, & 32619

General remarks and official action taken:

This is a consent order with Accident Fund Insurance Company of America (Respondent). The commissioner of the Texas Department of Insurance, Division of Workers' Compensation (DWC) considers whether DWC should take disciplinary action against Respondent.

Waiver

Respondent acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Respondent waives all of these rights, and any other procedural rights that apply, in consideration of the entry of this consent order.

Findings of Fact

1. Respondent holds a certificate of authority issued by the Texas Department of Insurance to transact the business of insurance pursuant to Tex. Ins. Code §§ 801.051-801.053 and is licensed to write multiple lines of insurance in Texas, including workers' compensation/employers' liability insurance.
2. Respondent was not selected to be tiered in the 2007, 2009, or 2010 Performance Based Oversight (PBO) assessments. Respondent was classified as "average" tier in the 2012, 2014, 2016, 2018, 2020, and 2022 PBO assessments.

Failure to Timely Act on a Medical Bill and Failure to Timely Pay Interest

File No. 32545

3. On [REDACTED] a health care provider provided medical services to an injured employee. On [REDACTED] Respondent received a completed medical bill for [REDACTED] from the health care provider.
4. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED]
5. On [REDACTED] Respondent paid [REDACTED], which was 66 days late.
6. On [REDACTED] Respondent paid [REDACTED] in interest due on the late medical bill payment, which was 106 days late.

File No. 32546

7. On [REDACTED] a Designated Doctor (DD) provided medical services to an injured employee.
8. On [REDACTED] Respondent received a completed medical bill for \$650.00 from the DD.
9. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act [REDACTED]
10. On [REDACTED] Respondent paid \$650.00 to the DD, which was 89 days late.
11. On [REDACTED] Respondent paid [REDACTED] in interest due on the late medical bill to the DD, which was 91 days late.

DWC Audit No. MBP-23-102

File No. 32619

12. On [REDACTED] DWC initiated DWC Audit No. MBP-23-102 to determine whether Respondent complied with the Texas Labor Code and related rules on the timely

processing of initial medical bills and the timely and accurate reporting of electronic data interchange (EDI) medical bill payment data to DWC.

13. The audit examined initial medical bills submitted to DWC between [REDACTED] and [REDACTED] DWC identified 100 bills for audit. A total of eight bills failed to meet selection criteria and were dropped from the audit sample. The remaining 92 bills were reviewed to determine Respondent's compliance.
14. The audit focused on the timely and accurate processing of initial medical bills and EDI reporting. The EDI portion of the audit focused on the timely and accurate reporting of medical bill payment data and seven data elements reported to DWC (Rendering Line Provider National Provider Identifier Number (NPI), Rendering Line Provider State License Number, Referring Provider Last/Group Name, Referring Provider State License Number, Billing Provider Federal Employer Identification Number, Date Bill Received, and Date Bill Paid or Denied).

Failure to Timely Pay Medical Bills

15. Respondent failed to timely process 11% of the initial medical bills within 45 days of receiving the bill (10 out of 92).
16. Specifically, Respondent issued payments to health care providers less than 30 days late in six instances and more than 30 days late in four instances.

Failure to Timely or Accurately Report EDI Medical Bill Payment Data to DWC

17. Respondent failed to accurately report the Rendering Line Provider NPI for 1% of the examined bills (one out of 92).
18. Respondent failed to accurately report the Rendering Line Provider State License Number for 14% of the examined bills (13 out of 92).
19. Respondent failed to accurately report the Referring Provider Last/Group Name for 1% of the examined bills (one out of 92).
20. Respondent failed to accurately report the Referring Provider State License Number for 5% of the examined bills (five out of 92).

21. Respondent failed to accurately report the Date Bill Received for 7% of the examined bills (six out of 92).
22. Respondent failed to accurately report the Date Bill Paid or Denied for 1% of the examined payments (one out of 92).

Assessment of Sanction

1. Prompt payment of medical bills is imperative to DWC's goal of ensuring that injured employees have access to prompt, high-quality medical care. Failure to promptly pay medical bills harms medical providers economically, increases disputes and exhausts administrative resources in the workers' compensation system.
2. DWC relies on medical bill payment information insurance carriers submit for many purposes, including, but not limited to, providing required information and reports to the Legislature; ensuring that health care providers and insurance carriers comply with DWC's medical policies and fee guidelines; creating medical fee guidelines; adopting treatment and return-to-work guidelines; and detecting patterns and practices in medical charges, payments, and protocols.
3. DWC relies on claims information insurance carriers submit for many purposes, including, but not limited to, providing required information and reports to the Legislature, ensuring that insurance carriers comply with the Texas Labor Code and DWC rules, and detecting patterns and practices in actions taken on claims.
4. In assessing the sanction for this case, DWC fully considered the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e):
 - the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act;
 - the history and extent of previous administrative violations;
 - the violator's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act;
 - the penalty necessary to deter future violations;
 - whether the administrative violation had a negative impact on the delivery of benefits to an injured employee;
 - the history of compliance with electronic data interchange requirements;

- to the extent reasonable, the economic benefit resulting from the prohibited act; and
 - other matters that justice may require, including, but not limited to:
 - PBO assessments;
 - prompt and earnest actions to prevent future violations;
 - self-report of the violation;
 - the size of the company or practice;
 - the effect of a sanction on the availability of health care; and
 - evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.
5. DWC found the following factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e) to be aggravating: the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act; the history and extent of previous administrative violations; the penalty necessary to deter future violations; whether the administrative violation had a negative impact on the delivery of benefits to an injured employee; and other matters that justice may require, including but not limited to evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC Rules. Further, in ECase # 32546, the late medical bill payment was 89 days late and involved DD services, which do not require preauthorization and are essential to the Texas workers' compensation system.
6. DWC is aware of no mitigating factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
7. Respondent acknowledges communicating with DWC about the relevant statute and rule violations alleged; that the facts establish that the administrative violation(s) occurred; and that the proposed sanction is appropriate, including the factors DWC considered under Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
8. Respondent acknowledges that, in assessing the sanction, DWC considered the factors in Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).

Conclusions of Law

1. The commissioner has jurisdiction over this matter pursuant to Tex. Lab. Code §§ 402.001, 402.00111, 402.00114, 402.00116, 402.00128, 414.002, and 414.003.
2. The commissioner has the authority to dispose of this case informally pursuant to Tex. Gov't Code § 2001.056, Tex. Lab. Code §§ 401.021 and 402.00128(b)(6)-(7), and 28 Tex. Admin. Code § 180.26(h) and (i).
3. Respondent 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 intent to institute disciplinary action, notice of hearing, a public hearing, a proposal for decision, a rehearing by the commissioner, and judicial review.
4. Pursuant to Tex. Lab. Code § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
5. Pursuant to Tex. Lab. Code § 415.002(a)(20), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule.
6. Pursuant to Tex. Lab. Code § 415.002(a)(22), an insurance carrier or its representative commits an administrative violation each time it fails to comply with a provision of the Texas Workers' Compensation Act.

Failure to Timely Act on a Medical Bill

7. Pursuant to Tex. Lab. Code § 408.027 and 28 Tex. Admin. Code § 133.240, an insurance carrier is required to timely process and take final action on a completed medical bill within 45 days of receiving the bill.
8. Respondent violated Tex. Lab. Code §§ 408.027; 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 133.240 each time Respondent failed to pay, reduce, deny, or determine to audit a completed medical bill within 45 days of receiving the bill.

Failure to Timely Pay Interest

9. Pursuant to 28 Tex. Admin. Code § 133.240(l), all payments of medical bills that an insurance carrier makes on or after the 60th day after the date the insurance carrier originally received the complete medical bill shall include interest calculated in accordance with § 134.130 of this title without any action taken by the division. The interest payment shall be paid at the same time as the medical bill payment.
10. Respondent violated Tex. Lab. Code § 415.002(a)(22), and 28 Tex. Admin. Code § 133.240(l) when it failed to timely pay interest on a late medical bill payment.

Failure to Timely or Accurately Report EDI Medical Bill Payment Data to DWC

11. Pursuant to 28 Tex. Admin. Code § 134.804(d), insurance carriers are responsible for timely and accurately submitting medical EDI records to DWC.
12. Respondent violated Tex. Lab. Code § 415.002(a)(20) each time it failed to submit timely and accurate medical EDI records to DWC.

Order


It is ordered that Accident Fund Insurance Company of America must pay an administrative penalty of \$11,000 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, Accident Fund Insurance Company of America must pay the administrative penalty by electronic transfer using the State Invoice Payment Service, company check, cashier's check, or money order and make it payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement Section, MC AO-9999, PO Box 12030, Austin, Texas 78711-2030.



Jeff Nelson
Commissioner
TDI, Division of Workers' Compensation

Approved Form and Content:



Austin Southerland
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Commissioner's Order
Accident Fund Insurance Company of America
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Unsworn Declaration

STATE OF Michigan §
§
COUNTY OF Ingham §

Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Joe Wrozek. I hold the position of Compliance Advisor and am the authorized representative of Accident Fund Insurance Company of America. My business address is:

200 N. Grand Ave., Lansing, Ingham MI, 48901.
(Street) (City) (County) (State) (ZIP Code)

I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the facts stated in this document are true and correct.



Declarant

Executed on September 12, 2023.