

2019 6014  
No. \_\_\_\_\_

**OFFICIAL ORDER**  
*of the*  
**TEXAS COMMISSIONER OF WORKERS' COMPENSATION**

Date: **JUL 10 2019**

**Subject Considered:**

**NEW HAMPSHIRE INSURANCE COMPANY**  
175 Water Street, 18th Floor  
New York City, New York 10038

**CONSENT ORDER**  
TDI-DWC ENFORCEMENT FILE NO. 15514

**General remarks and official action taken:**

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against New Hampshire Insurance Company (New Hampshire).

**WAIVER**

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

**FINDINGS OF FACT**

The commissioner makes the following findings of fact:

1. New Hampshire 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, including workers' compensation/employers' liability insurance in Texas.
2. New Hampshire was classified as "poor" tier in the 2007 Performance Based Oversight (PBO) assessment, and "average" tier in the 2009, 2010, 2012, 2014, 2016, and 2018 PBO assessments.

**FAILURE TO TAKE FINAL ACTION ON A REQUEST FOR RECONSIDERATION**

**Case 1**

3. On [REDACTED], New Hampshire received a complete request for reconsideration of a medical bill from a health care provider for the date of service [REDACTED].

4. New Hampshire was required to take action regarding payment or denial of the reconsideration request no later than the 30th day after receipt of the request, which in this case was on [REDACTED].
5. New Hampshire took action and issued payment plus interest to the health care provider on [REDACTED], which was 279 days late.

**Case 2**

6. On [REDACTED], New Hampshire received a complete request for reconsideration of a medical bill from a health care provider for dates of service between [REDACTED] and [REDACTED].
7. New Hampshire was required to take action regarding payment or denial of the reconsideration request no later than the 30th day after receipt of the request, which in this case was on [REDACTED].
8. New Hampshire took action and issued payment with interest to the health care provider on [REDACTED], which was 70 days late.

**FAILURE TO TIMELY PAY BENEFITS**

**Case 1**

9. On or around [REDACTED], the injured employee received a Notification of Suspension of Indemnity Benefit Payment (PLN-09) dated [REDACTED], from the adjuster incorrectly stating that impairment income benefits (IIBs) had been paid in full as of that date.
10. New Hampshire had erroneously suspended IIBs payments to the injured employee but was still required to continue paying IIBs to the injured employee weekly as and when they accrued.
11. Payment of IIBs for the benefit week of [REDACTED], through [REDACTED], was due on [REDACTED]. In this case, New Hampshire issued payment of IIBs 16 days late on [REDACTED].
12. Payment of IIBs for the benefit week of [REDACTED], through [REDACTED], was due on [REDACTED]. In this case, New Hampshire issued payment nine days late on [REDACTED].
13. Payment of IIBs for the benefit week of [REDACTED], through [REDACTED], was due on [REDACTED] and was paid two days late on [REDACTED].

**Case 2**

14. On [REDACTED], New Hampshire received a report from a designated doctor (DD).
15. The DD certified that the injured employee reached maximum medical improvement on [REDACTED], with a [REDACTED]% impairment rating.

16. New Hampshire was required to pay IIBs to the injured employee in accordance with the DD report no later than five days after receipt of the DD report, or by [REDACTED].
17. New Hampshire issued partial payment to the injured employee on [REDACTED], but did not come into full compliance until it issued full payment of all accrued IIBs plus interest for the benefit weeks of [REDACTED], through [REDACTED], on [REDACTED], which was 141 days late.

**Case 3**

18. From [REDACTED], to [REDACTED], New Hampshire denied payment for the same recurring physical therapy services billed by a healthcare provider based on extent of injury (EOI).
19. On [REDACTED], New Hampshire received a report from a DD determining that the reasons relied on by the carrier to deny the medical bills were incorrect.
20. New Hampshire was required to reprocess all of the medical bills that were denied inconsistent with the findings of the DD's report within 21 days from receipt of the DD report, or by [REDACTED].
21. In this case, the first medical bill was reprocessed and paid on [REDACTED], which was 60 days late.
22. The second medical bill was reprocessed and paid on [REDACTED], which was 49 days late.
23. The remaining three medical bills were reprocessed and paid on [REDACTED], which was 18 days late.

**BREACHING OF AN AGREEMENT APPROVED BY DWC**

24. On [REDACTED], the Texas Department of Insurance, Division of Workers' Compensation (DWC) approved a Benefit Dispute Agreement (BDA) entered into by the injured employee and New Hampshire.
25. The carrier had adjusted the injured employee's average weekly wage (AWW) based on an alleged bona fide offer of employment (BFOE) and had paid the injured employee an adjusted amount of \$ [REDACTED].
26. The parties agreed, in part, that the injured employee had disability from [REDACTED], through [REDACTED]; and that, since the employer had not made a bona fide offer of employment to the injured employee, New Hampshire was not entitled to adjust post-injury weekly earnings.
27. New Hampshire received the BDA on [REDACTED], and was required to comply with the BDA within five days of receipt, or by [REDACTED].

28. New Hampshire issued a deficit payment of \$ [REDACTED] with interest on [REDACTED], which was 60 days late.

#### ASSESSMENT OF SANCTION

29. Failure to take timely action on requests for reconsideration needlessly delays the medical fee dispute resolution process.
30. Failure to accurately provide appropriate income benefits in a manner that is timely and cost-effective is harmful to injured employees and to the workers' compensation system of the state.
31. Adherence to DWC approved agreements is imperative to minimizing disputes and resolving them promptly and fairly.
32. In assessing the sanction for this case, DWC appropriately and fully considered the following factors set forth 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 demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;
  - the penalty necessary to deter future violations;
  - whether the administrative violation has negative impact on the delivery of benefits to an injured employee;
  - the history of compliance with electronic data interchange requirements;
  - other matters that justice may require, including but not limited to:
    - PBO assessments;
    - the promptness and earnestness of 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; and
  - to the extent reasonable, the economic benefit resulting from the prohibited act.
33. In assessing the sanction for this case, DWC found the following factors set forth 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; and other matters that justice may require including evidence of heightened awareness of the legal duty to comply with the Texas Workers' Compensation Act and DWC rules.

34. In assessing the sanction for this case, DWC found the following factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act; the penalty necessary to deter future violations; whether the administrative violation has negative impact on the delivery of benefits to an injured employee; and other matters that justice may require including the promptness and earnestness of actions to prevent future violations.
35. New Hampshire acknowledges that DWC and New Hampshire have communicated regarding the relevant statutes and rules violated; the facts establishing that the administrative violation occurred; and the appropriateness of the proposed sanction, including how DWC considered the factors under TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).
36. New Hampshire acknowledges that, in assessing the sanction, DWC considered the factors set forth in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e).

#### CONCLUSIONS OF LAW

The commissioner makes the following 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, 414.003, 415.002, and 415.021.
2. The commissioner has authority to informally dispose of this matter as set forth under TEX. GOV'T CODE § 2001.056, TEX. LAB. CODE § 402.00128(b)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. Pursuant to TEX. LAB. CODE § 415.021, the commissioner may assess an administrative penalty against a person who commits an administrative violation.
4. 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.
5. 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.
6. Pursuant to 28 TEX. ADMIN. CODE § 133.250, an insurance carrier is required to take final action on a complete request for reconsideration of the insurance carrier's action on a medical bill within 30 days of receipt of the request for reconsideration. The insurance carrier shall provide an explanation of benefits for all items included in a reconsideration request in the form and format prescribed by DWC.
7. New Hampshire violated TEX. LAB. CODE § 415.002(a)(20) each time it failed to timely take final action on a request for reconsideration of a medical bill action within 30 days of receipt.

8. Pursuant to TEX. LAB. CODE §§ 408.081 and 409.023, insurance carriers are required to pay IIBs weekly, as and when the benefits accrue, and without order from the commissioner.
9. New Hampshire violated TEX. LAB. CODE §§ 408.081, 409.023, and § 415.002(a)(22) each time it failed to continue to timely pay accrued IIBs.
10. Pursuant to 28 TEX. ADMIN. CODE § 127.10(h), the insurance carrier shall pay all medical benefits based on conditions to which the DD determines the compensable injury extends. The insurance carrier shall have 21 days from the receipt of the DD's report to reprocess and pay all medical bills previously denied in accordance with the DD's findings. By the end of this period, insurance carriers shall tender payment on these medical bills in accordance with the Texas Workers' Compensation Act and Chapters 133 and 134 of this title.
11. New Hampshire violated TEX. ADMIN. CODE § 127.10(h) and TEX. LAB. CODE § 415.002(a)(20) each time it failed to reprocess and timely pay accrued IIBs in accordance with the DD report within 21 days of receipt of the report.
12. Pursuant to 28 TEX. ADMIN. CODE § 127.10(h), the insurance carrier shall pay accrued income benefits in accordance with a DD report no later than five days from the receipt of the DD's report.
13. New Hampshire violated TEX. ADMIN. CODE § 127.10(h) and TEX. LAB. CODE § 415.002(a)(20) each time it failed to reprocess and timely pay accrued IIBs in accordance with the DD report within five days of receipt of the report.
14. Pursuant to TEX. LAB. CODE § 415.010, a person commits a violation if the person breaches a provision of an agreement approved by DWC.
15. New Hampshire violated TEX. LAB. CODE §§ 415.002(a)(22) and 415.010 when it failed to initiate payment of TIBs within five days of receipt of the BDA approved by DWC.

**ORDER**

New Hampshire Insurance Company is ORDERED to pay an administrative penalty of \$30,000 within 30 days from the date of this Order.

The administrative penalty must be paid by company check, cashier's check, or money order made payable to the "State of Texas." Mail the administrative penalty to the Texas Department of Insurance, Attn: DWC Enforcement, MC 9999, P.O. Box 149104, Austin, Texas, 78714-9104.



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Cassie Brown <sup>WCTP</sup>  
Commissioner of Workers' Compensation

Approved as to Form and Content:



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Andrés Durá  
Staff Attorney, DWC Enforcement  
Texas Department of Insurance

