

No. 2020-6576

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

Date: 11-23-2020

Subject Considered:

Arrowood Indemnity Company
3600 Arco Corporate Drive
Charlotte, North Carolina 28273

Consent Order
DWC Enforcement File Nos. 21612 and 21852

General remarks and official action taken:

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

Waiver

Arrowood acknowledges that the Texas Labor Code and other applicable laws provide certain rights. Arrowood 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. Arrowood 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. Arrowood was not selected to be tiered in the 2007, 2009, 2010, 2012, 2014, 2016, or 2018 Performance Based Oversight (PBO) assessments.

Failure to Provide Required Information to the Health Care Provider

First Instance: File No. 21612

3. Between [REDACTED], and [REDACTED], the injured employee's pharmacy submitted bills to Arrowood. Arrowood made partial payments to the injured employee's pharmacy. Arrowood submitted explanations of benefits (EOBs) to the pharmacy. The EOBs did not comply with TEX. LAB. CODE § 408.0281 because they failed to meet the notice requirements and failed to provide:
- a contract between the informal network and the injured employee's pharmacy;
 - the name of the informal network on the EOB; and
 - a specific fee schedule.

Second Instance: File No. 21852

4. Between [REDACTED], and [REDACTED], the injured employee's pharmacy submitted bills to Arrowood. Arrowood made partial payments to the injured employee's pharmacy. Arrowood submitted EOBs to the pharmacy. The EOBs did not comply with TEX. LAB. CODE § 408.0281 because they failed to meet the notice requirements and failed to provide:
- a contract between the informal network and the injured employee's pharmacy;
 - the name of the informal network on the EOB; and
 - a specific fee schedule.

Assessment of Sanction

1. Failure to timely provide required information causes confusion, is not cost-effective, and is harmful to injured employees and the Texas workers' compensation system.
2. 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.
3. DWC found the following factors in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be aggravating: the history and extent of previous administrative violations; the penalty necessary to deter future violations; and other matters that justice may require, including, but not limited to, the size of the company or practice.
4. DWC found the following factors in TEX. LAB. CODE § 415.021(c) and 28 TEX. ADMIN. CODE § 180.26(e) to be mitigating: the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act, as the dollar amounts were small, and the affected party was the pharmacy, not the injured employee. Therefore, there was no direct negative impact on the delivery of benefits to the injured employee.
5. Arrowood acknowledges it communicated with DWC about the relevant statutes and rules it violated; the facts establish that the administrative violation occurred; and 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).
6. Arrowood 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, 402.00114, 402.00116, 402.00128, and 414.002.
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)(7), and 28 TEX. ADMIN. CODE § 180.26(h).
3. Arrowood 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.
7. Pursuant to TEX. LAB. CODE § 408.0281(c), an insurance carrier may pay a health care provider fees for pharmaceutical services that are inconsistent with the fee guidelines adopted by the commissioner only if the insurance carrier has a contract with the health care provider, and that contract includes a specific fee schedule. If an insurance carrier or its authorized agent chooses to use an informal or voluntary network to obtain a contractual fee arrangement, there must be a contractual arrangement between the insurance carrier and the informal network, and the informal network and the health care provider that includes a specific fee schedule and complies with the notice requirements of this section.
8. Pursuant to TEX. LAB. CODE § 408.0281(d), an informal network or the insurance carrier must, at least quarterly, notify each health care provider of any person, other

than an injured employee, when the network's contractual fee arrangements with the health care provider are sold, leased, transferred, or conveyed.

9. Pursuant to TEX. LAB. CODE § 408.0281(f), an insurance carrier, or an informal network at the insurance carrier's request, must provide copies of each contract described by Subsection (c) to DWC when DWC requests it. Information included in a contract under Subsection (c) is confidential and not subject to disclosure under TEX. GOV'T CODE CHAPTER 552. However, the insurance carrier may be required to pay fees according to DWC's fee guidelines if:
 - the contract:
 - is not provided to DWC on DWC's request;
 - does not include a specific fee schedule consistent with Subsection (c); or
 - does not clearly state that the contractual fee arrangement is between the health care provider and the named insurance carrier or its authorized agent; or
 - the insurance carrier or its authorized agent does not comply with the notice requirements under Subsection (d).
10. Pursuant to TEX. LAB. CODE § 408.0281(h), an insurance carrier or its authorized agent commits an administrative violation if it violates any provision of this section. Any administrative penalty assessed under this subsection must be assessed against the insurance carrier, regardless of whether the insurance carrier or its agent committed the violation.
11. Pursuant to 28 TEX. ADMIN. CODE § 133.240(f), the paper form of an EOB under Subsection (e) of this section, § 133.250 of this title (relating to Reconsideration for Payment of Medical Bills), or § 133.260 of this title (relating to Refunds) must include the following elements: pharmacy, durable medical equipment, or the home health care service's informal or voluntary network name (if applicable) pursuant to TEX. LAB. CODE §§ 408.0281 and 408.0284.
12. Pursuant to 28 TEX. ADMIN. CODE § 133.240(o), an insurance carrier commits an administrative violation if it fails to pay, reduce, deny, or notify the health care provider of the intent to audit a medical bill in accordance with TEX. LAB. CODE § 408.027 and DWC rules.

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13. Arrowood violated TEX. LAB. CODE § 415.002(a)(20) and (22) when it failed to provide information required under TEX. LAB. CODE § 408.0281 and 28 TEX. ADMIN. CODE § 133.240.

Order

It is ordered that Arrowood Indemnity Company must pay an administrative penalty of \$8,750 within 30 days from the date of this order. Arrowood Indemnity Company must pay the administrative penalty by 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 9999, P.O. Box 149104, Austin, Texas 78714-9104.



Cassie Brown
Commissioner of Workers' Compensation

Approved Form and Content:



Amy Norman
Staff Attorney, Enforcement
Compliance and Investigations
Division of Workers' Compensation

