

No. **2023-8412**

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

Date: 12/15/2023

Subject Considered:

Norguard Insurance Company
16 South River Street
Wilkes-Barre, Pennsylvania 18703

Consent Order
DWC Enforcement File No. 32836

General remarks and official action taken:

This is a consent order with Norguard Insurance Company (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 workers' compensation/employers' liability insurance in Texas.
2. Respondent was classified as "average" tier in the 2022 and 2020 Performance Based Oversight (PBO) assessments. Respondent was not selected to be tiered in the 2018 PBO assessment.

Failure to Timely Respond to a Request for Reimbursement of Medical Expenses

3. On [REDACTED], Respondent received a request for reimbursement for \$ [REDACTED] in health care services paid out of pocket by an injured employee.
4. On [REDACTED], Respondent contacted the injured employee using a Spanish language translator to inform the injured employee that Respondent required itemized payment histories or receipts demonstrating what the injured employee had paid to each specific health care provider and for specific medical services.
5. Respondent was required to pay or deny the request not later than the 45th day after receipt, or by [REDACTED].
6. On [REDACTED], Respondent denied the injured employee's request for reimbursement 328 days late after DWC staff contacted Respondent to investigate the matter.

Assessment of Sanction

1. Failing to timely respond to a reimbursement request increases the likelihood of disputes and impedes efforts to resolve them promptly and fairly. Further, failure to timely act on a reimbursement request is economically harmful and circumvents the Texas workers' compensation system and the roles of its system participants.
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 seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act; 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 considered as mitigating Respondent's lack of previous administrative violations on this issue pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e).
 5. 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).
 6. 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

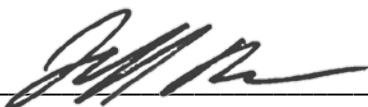
to, issuance and service of notice of intent to institute disciplinary action, notice of hearing, a public hearing, a proposal for decision, a rehearing by the commissioner, and judicial review.

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 28 Tex. Admin. Code § 133.270, an insurance carrier shall pay or deny the injured employee's request for reimbursement within 45 days of receipt.
7. Respondent violated Tex. Lab. Code § 415.002(a)(20) and 28 Tex. Admin. Code 133.270(c) by failing to respond to a request for reimbursement for out-of-pocket medical expenses within 45 days of receipt.

Order


It is ordered that Norguard Insurance Company must pay an administrative penalty of \$1,500 within 30 days from the date the Commissioner signs this order.

After receiving an invoice, Norguard Insurance Company 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:



Tyrus Housh
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