

No. 2023-8372

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

Date: 11/30/2023

Subject Considered:

Zurich American Insurance Company
1299 Zurich Way
Schaumburg, Illinois 60196-1091

Consent Order
DWC Enforcement File Nos. 32701, 32838, 32839, 32945, and 32984

General remarks and official action taken:

This is a consent order with Zurich American 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 multiple lines of insurance in Texas, including workers' compensation/employers' liability insurance.
2. Respondent was classified as "average" tier in the 2018, 2020, and 2022 Performance Based Oversight (PBO) assessments.

Improperly Recouping an Overpayment of Income Benefits

File No. 32701

3. In [REDACTED], Respondent identified an overpayment of approximately \$ [REDACTED] in Supplemental Income Benefits (SIBs) to an injured employee. Respondent determined that the injured employee should be receiving \$ [REDACTED] per week rather than \$ [REDACTED], which the injured employee had received for 7 weeks.
4. On or about [REDACTED], Respondent recouped the overpayment by reducing the injured employee's SIBs to \$ [REDACTED], which was greater than 25% of the injured employee's benefit amount.
5. On [REDACTED], Respondent overpaid \$ [REDACTED] to the injured employee.

Failure to Timely Act on a Medical Bill

File No. 32838

6. On [REDACTED], Respondent requested a designated doctor (DD) exam, which was performed on [REDACTED].
7. On [REDACTED], Respondent received a \$ [REDACTED] completed medical bill from the DD.
8. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED].
9. On [REDACTED], Respondent paid \$ [REDACTED] to the DD, which was 122 days late.
10. On [REDACTED], Respondent paid \$ [REDACTED] in interest, which was five days late.

File No. 32839

11. On [REDACTED], Respondent requested a DD exam, which was performed on [REDACTED].
12. On [REDACTED], Respondent received a completed medical bill for \$ [REDACTED] from the DD.

13. Respondent was required to act on the bill within 45 days of receiving it. The deadline to act was [REDACTED].
14. On [REDACTED], the DD filed a request for reconsideration.
15. On [REDACTED], Respondent paid \$ [REDACTED] to the DD, which was 110 days late.
16. On [REDACTED], Respondent paid \$ [REDACTED] in interest, which was nine days late.

Failure to Comply with a DWC Order

File No. 32945

17. On [REDACTED], the Division issued Medical Fee Dispute Resolution Findings and Decision No. M4-22-1388-01 (MFDR Order), which required Respondent to pay the healthcare provider (HCP) \$ [REDACTED] plus accrued interest by [REDACTED]. Respondent received the MFDR Order on [REDACTED].
18. Almost a year later on [REDACTED], Respondent paid the HCP \$ [REDACTED], which was 310 days late and an underpayment of \$ [REDACTED].
19. On [REDACTED], Respondent paid the HCP \$ [REDACTED] in interest.
20. On [REDACTED], Respondent complied with the MFDR Order by paying the HCP \$ [REDACTED] plus \$ [REDACTED] in interest, which was 394 days late.

Failure to Timely Pay or Dispute Temporary Income Benefits (TIBs)

File No. 32984

21. On [REDACTED], Respondent received an employee's notice of a workplace injury on [REDACTED].
22. The injured employee's first day of disability began on [REDACTED]. The eighth day of disability accrued on [REDACTED].

- 23. Respondent was required to initiate or dispute TIBs either 15 days after it received written notice of the injury or seven days after the accrual date, whichever is later. In this case, the latest date was [REDACTED].
- 24. On [REDACTED], Respondent initiated TIBs, which was 65 days late.
- 25. Respondent was required to pay TIBs to the injured employee from [REDACTED], through [REDACTED]. The TIBs payments were due seven days after the first day of the pay period. Respondent failed to timely TIBs, as follows:

| | Payment Period | Date Due | Date Paid | Days Late |
|----|----------------|------------|------------|-----------|
| a. | [REDACTED] | [REDACTED] | [REDACTED] | 65 |
| b. | [REDACTED] | [REDACTED] | [REDACTED] | 62 |
| c. | [REDACTED] | [REDACTED] | [REDACTED] | 55 |
| d. | [REDACTED] | [REDACTED] | [REDACTED] | 48 |
| e. | [REDACTED] | [REDACTED] | [REDACTED] | 41 |
| f. | [REDACTED] | [REDACTED] | [REDACTED] | 34 |
| g. | [REDACTED] | [REDACTED] | [REDACTED] | 27 |
| h. | [REDACTED] | [REDACTED] | [REDACTED] | 20 |
| i. | [REDACTED] | [REDACTED] | [REDACTED] | 13 |
| j. | [REDACTED] | [REDACTED] | [REDACTED] | 6 |

- 26. In total, Respondent failed to timely pay \$ [REDACTED] in TIBs.
- 27. On [REDACTED], Respondent paid interest of \$ [REDACTED], which was 18 days late.

Assessment of Sanction

- 1. Improper attempts to recoup an overpayment harm injured employees and abrogates a carrier's responsibilities under the Texas Workers' Compensation Act and DWC Rules.
- 2. 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. It is a serious violation to fail to timely act on a medical bill involving

designated doctor services, which do not require preauthorization and which serve an essential function in the Texas workers' compensation system. Untimely payment can have a chilling effect on a designated doctors' participation in the system.

3. Failure to timely comply with DWC orders for payment of medical bills is not cost-effective and is harmful to injured employees and the Texas workers' compensation system.
4. Failure to provide income benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system.
5. 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.
6. 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; and whether the administrative violation had a negative impact on the delivery of benefits to an injured employee. Further, two of the late medical bill payments involved DD services, which do not require preauthorization and are essential to the Texas workers' compensation system. Two of the late medical bills were also paid more than 60 days late.

7. DWC considers the following factors mitigating, pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): Respondent's demonstration of good faith, including actions it took to rectify the consequences of the prohibited act and prompt and earnest actions to prevent future violations. Specifically, Respondent instituted new training and procedures to prevent future violations.
8. 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).
9. 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.

Improperly Recouping an Overpayment of Income Benefits

File No. 32701

7. Pursuant to Tex. Lab. Code § 408.0815(a)(1), the commissioner by rule shall establish a procedure by which an insurance carrier may recoup an overpayment of income benefits from future income benefit payments.
8. Pursuant 28 Tex. Admin. Code § 126.16(b)(1), if an insurance carrier determines that it has overpaid income benefits to an injured employee, the insurance carrier may recoup the overpayment from future income benefit payments after the insurance carrier notifies the injured employee in writing that it will begin withholding benefits to recoup an overpayment.
9. Pursuant 28 Tex. Admin. Code § 126.16(b)(2), if the injured employee's income benefits are not concurrently being reduced to pay approved attorney's fees or to recoup a division approved advance, the insurance carrier may recoup the overpayment under this subsection in an amount not to exceed 25% of the income benefit payment to which the injured employee is entitled. The insurance carrier may not begin recoupment of the overpayment earlier than the second income benefit payment made after the written notice has been sent to the injured employee.
10. Respondent violated Tex. Lab. Code §§ 415.002(a)(20); and 28 Tex. Admin. Code § 126.16(b)(1) and (2) by failing to follow the procedures for recouping overpayments of income benefit.

Failure to Timely Act on a Medical Bill

File Nos. 32838 and 32839

11. 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.
12. 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 for Medical Benefits

File Nos. 32838 and 32839

13. Pursuant to Tex. Lab. Code § 413.019(a) and 28 Tex. Admin. Code § 134.130(a), an insurance carrier must pay interest on medical bills paid on or after the 60th day after the insurance carrier originally received the complete medical bill.
14. Respondent violated Tex. Lab. Code §§ 413.019(a); 415.002(a)(20) and (22); and 28 Tex. Admin. Code § 134.130(a) by failing to pay interest on medical bills paid on or after the 60th day after the insurance carrier originally received the complete medical bill.

Failure to Comply with a DWC Order

File No. 32945

15. Pursuant to Tex. Lab. Code § 415.002(a)(17), an insurance carrier or its representative commits an administrative violation if it fails to pay an order awarding benefits.
16. Pursuant to Tex. Lab. Code §§ 415.021(a) and 415.0035(e), an insurance carrier commits an administrative violation if it violates, fails to comply with, or refuses to comply with a DWC order.
17. Respondent violated Tex. Lab. Code §§ 415.002(a)(17) and (22), 415.021(a), and 415.0035(e) by failing to comply with a DWC order.

Failure to Timely Pay or Dispute TIBs

File No. 32984

18. Pursuant to Tex. Lab. Code §§ 408.081; 409.023; and 415.002(a)(16), an insurance carrier must pay benefits weekly, as and when the benefits accrue, without order from the commissioner.
19. Pursuant to Tex. Lab. Code §§ 408.081; 408.082; 409.021; and 28 Tex. Admin. Code §§ 124.3 and 124.7, an insurance carrier is required to initiate payment of TIBs no later than the 15th day after it receives written notice of the injury or the seventh day after the accrual date, unless the insurance carrier notifies DWC and the injured employee in writing of its refusal to pay.
20. Respondent violated Tex. Lab. Code §§ 409.021; 415.002(a)(16), (20), and (22); and 28 Tex. Admin. Code §§ 124.3 and 124.7 by failing to timely pay or dispute TIBs.

Failure to Timely Pay Interest on Income Benefits

File No. 32984

21. Pursuant to Tex. Lab. Code § 408.064 and 28 Tex. Admin. Code § 126.12(b), accrued but unpaid income benefits and interest shall be paid in a lump sum.
22. Respondent violated Tex. Lab. Code §§ 408.064, 415.002(a)(20) and (22), and 28 Tex. Admin. Code § 126.12(b), by failing to timely pay interest on late income benefits.

Order

It is ordered that Zurich American Insurance Company must pay an administrative penalty of \$18,000 within 30 days from the date the Commissioner signs the order.

After receiving an invoice, Zurich American 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:



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