

No. 2019 5908

OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF WORKERS' COMPENSATION

Date: MAR 20 2019

Subject Considered:

CITY OF WACO
P.O. Box 2570
Waco, Texas 76702-2570

CONSENT ORDER
TDI-DWC ENFORCEMENT FILE NO. 16170

General remarks and official action taken:

The commissioner of workers' compensation (commissioner) considers whether disciplinary action should be taken against City of Waco.

WAIVER

City of Waco acknowledges that the Texas Labor Code and other applicable laws provide certain rights. City of Waco 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. City of Waco is a self-insured government entity that provides workers' compensation benefits to its employees in accordance with TEX. LAB. CODE Ch. 504.
2. City of Waco was not tiered in the 2007, 2009, 2010, 2012, 2014, or 2016 Performance Based Oversight (PBO) assessments.

DWC AUDIT MBP-18-206

3. On [REDACTED] the Texas Department of Insurance, Division of Workers' Compensation (DWC) initiated an audit to determine whether City of Waco was complying with the Texas Labor Code and related rules regarding timely payment of initial medical bills, and the timely and accurate reporting of medical records to DWC.
4. The audit examined initial medical bills submitted to DWC between [REDACTED] and [REDACTED]. DWC identified 100 bills for audit. One bill failed to meet selection criteria and was dropped from the audit sample. The remaining 99 bills were reviewed to determine compliance.

5. The audit focused on timeliness of medical bill processing and Electronic Data Interchange (EDI) reporting. The EDI audit focused on timeliness of reporting the medical bill payment data and the accuracy of seven data elements (Rendering Line Provider NPI Number, Rendering Line Provider State License Number, Referring Provider Last/Group Name, Referring Provider State License Number, Billing Provider FEIN, Date Bill Received, and Date Paid or Denied).

FAILURE TO TIMELY PAY MEDICAL BILLS

6. City of Waco failed to timely process 11% of the initial medical bills within 45 days of receipt (11 out of 99).
7. Specifically, City of Waco issued payments to health care providers between one and five days late in four instances, between six and 15 days late in three instances, and between 16 and 30 days late in four instances.

**FAILURE TO SUBMIT ACCURATE EDI MEDICAL BILL PAYMENT
INFORMATION TO DWC**

8. City of Waco failed to accurately report the Rendering Line Provider NPI Numbers for 7% of the bills examined (7 out of 99).
9. City of Waco failed to accurately report the Rendering Line Provider State License Numbers for 6% of the bills examined (6 out of 99).
10. City of Waco failed to accurately report the Referring Provider Last/Group Names for 48% of the bills examined (48 out of 99).
11. City of Waco failed to accurately report the Referring Provider State License Numbers for 80% (79 out of 99).
12. City of Waco failed to accurately report the Dates of Bill Receipt for 7% of the bills examined (7 out of 99).
13. City of Waco failed to accurately report Dates of Bill Payment or Denial in 92% of the bills examined (91 out of 99).
14. City of Waco inaccurately reported claims data to DWC on one claim. This inaccurate information caused the claim to be erroneously counted as a failure to timely process the initial medical bill during the audit.

ASSESSMENT OF SANCTION

15. Prompt payment of medical bills is imperative to DWC's goal of ensuring that injured employees have access to prompt, high-quality medical care.
16. DWC relies on the medical bill payment information submitted by the insurance carriers for a variety of 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.
17. 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 EDI 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.
18. 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 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 size of the political subdivision.
19. 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 history and extent of previous administrative violations; the history of compliance with EDI

requirements; and other matters that justice may require including City of Waco's status as a self-insured, political subdivision.

20. City of Waco acknowledges that DWC and City of Waco 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).
21. City of Waco 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, and 414.004.
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 the Texas Workers' Compensation Act.
6. Pursuant to TEX. LAB. CODE § 408.027 and 28 TEX. ADMIN. CODE § 133.240, insurance carriers are required to timely process and take final action on a properly completed medical bill within 45 days of receipt of the bill.
7. City of Waco violated TEX. LAB. CODE §§ 415.002(a)(20) and 415.002(a)(22) each time it failed to pay, reduce, deny, or determine to audit a properly completed medical bill within 45 days of receipt of the bill.
8. Pursuant to 28 TEX. ADMIN. CODE § 134.804(d), insurance carriers are responsible for the timely and accurate submission of medical EDI records.
9. City of Waco violated TEX. LAB. CODE § 415.002(a)(20) each time it failed to submit accurate medical EDI records to DWC.

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ORDER

City of Waco is ORDERED to pay an administrative penalty of \$15,500 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.



Cassie Brown *WCTP*
Commissioner of Workers' Compensation

Approved as to Form and Content:



Glen Imes
Staff Attorney, DWC Enforcement
Texas Department of Insurance

2019 5908

AFFIDAVIT

STATE OF Texas §
 §
COUNTY OF Travis §

Before me, the undersigned authority, personally appeared the affiant, who being by me duly sworn, deposed as follows:

"My name is Brandi Pejean am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

I hold the office of legal representative, and am the authorized representative of City of Waco. I am duly authorized by said organization to execute this statement.

City of Waco waives rights provided by the Texas Labor Code and other applicable laws, and acknowledges the jurisdiction of the Texas commissioner of workers' compensation.

City of Waco is voluntarily entering into this consent order. City of Waco consents to the issuance and service of this consent order."

Brandi Pejean
Affiant

SWORN TO AND SUBSCRIBED before me on MARCH 12th, 2019.

(NOTARY SEAL)



Susan Angelis
Signature of Notary Public

SUSAN ANGELIS
Printed Name of Notary Public

My Commission Expires: 06/11/22