

No. **2022-7355**

Confidential Information Redacted
Texas Labor Code §§402.083 and 402.092

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

Date: 6/24/2022

Subject Considered:

Midwest Employers Casualty Company
14755 North Outer 40 Road, Suite 300
Chesterfield, Missouri 63017-6050

Consent Order
DWC Enforcement File No. 28038

General remarks and official action taken:

This is a consent order with Midwest Employers Casualty 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 2007, 2009, and 2012 Performance Based Oversight (PBO) assessments. Respondent was not selected to be tiered in the 2010, 2014, 2016, 2018, or 2020 PBO assessments.

DWC Audit No. MBP-21-106

3. On [REDACTED] DWC initiated DWC Audit No. MBP-21-106 to determine whether Respondent complied with the Texas Labor Code and related rules on the timely processing of initial medical bills and the timely and accurate reporting of electronic data interchange (EDI) medical bill payment data to DWC.
4. The audit examined initial medical bills submitted to DWC between [REDACTED] and [REDACTED] DWC identified 100 bills for audit. A total of 36 bills failed to meet selection criteria and were dropped from the audit sample. The remaining 64 bills were reviewed to determine Respondent's compliance.
5. The audit focused on the timely and accurate processing of initial medical bills and EDI reporting. The EDI portion of the audit focused on the timely and accurate reporting of bill payment data and seven data elements reported to DWC (Rendering Line Provider National Provider Identifier Number (NPI), Rendering Line Provider State License Number, Referring Provider Last/Group Name, Referring Provider State License Number, Billing Provider Federal Employer Identification Number, Date Bill Received, and Date Bill Paid or Denied).

Failure to Timely Issue Medical Bill Payments

6. Respondent failed to timely process 13% of the initial medical bills within 45 days of receiving the bill (8 out of 64).
7. Respondent issued payments to health care providers less than 30 days late in three instances and more than 30 days late in five instances.

Failure to Timely or Accurately Report EDI Medical Bill Payment Data to DWC

8. Respondent failed to timely submit medical bill payment information to DWC in 13% of the examined payments (8 out of 64).

9. Respondent failed to accurately report the Rendering Line Provider NPI for 2% of the examined bills (1 out of 64).
10. Respondent failed to accurately report the Rendering Line Provider State License Number for 17% of the examined bills (11 out of 64).
11. Respondent failed to accurately report the Referring Provider Last/Group Name for 9% of the examined bills (6 out of 64).
12. Respondent failed to accurately report the Referring Provider State License Number for 5% of the examined bills (3 out of 64).
13. Respondent failed to accurately report the Date Bill Received for 25% of the examined bills (16 out of 64).
14. Respondent failed to accurately report the Date Bill Paid or Denied for 14% of the examined payments (9 out of 64).

Assessment of Sanction

1. Failure to pay health benefits in a timely and cost-effective manner is harmful to injured employees and the Texas workers' compensation system. Prompt payment of medical bills is imperative to DWC's goal of ensuring that injured employees have access to prompt, high-quality medical care. The division 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 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.
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 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.
4. DWC is aware of no mitigating factors 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 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 § 408.027 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.
8. Respondent violated Tex. Lab. Code §§ 415.002(a)(20) and (22) each time it failed to pay, reduce, deny, or determine to audit a completed medical bill within 45 days of receiving the bill.
9. Pursuant to 28 Tex. Admin. Code § 134.804(d), insurance carriers are responsible for timely and accurately submitting medical EDI records to DWC.
10. Respondent violated Tex. Lab. Code § 415.002(a)(20) each time it failed to submit timely and accurate medical EDI records to DWC.

Order

It is ordered that Midwest Employers Casualty Company must pay an administrative penalty of \$3,800 within 30 days from the date of this order. Midwest Employers Casualty Company must pay the administrative penalty by 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, P.O. Box 12030, Austin, Texas 78711-2030.



Dan Paschal, J.D.
Deputy Commissioner
Policy & Customer Services
TDI, Division of Workers' Compensation

Approved Form and Content:



Austin Southerland
Staff Attorney, Enforcement
Compliance and Investigations
TDI, Division of Workers' Compensation

Unsworn Declaration

STATE OF Missouri

§

COUNTY OF St Louis

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Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is Scott M. McDonough. I hold the position of Asst. Secretary and am the authorized representative of Midwest Employers Casualty Company. My business address is:

14755 N Outer Forty, Chesterfield, St Louis, MO, 63017.

(Street)

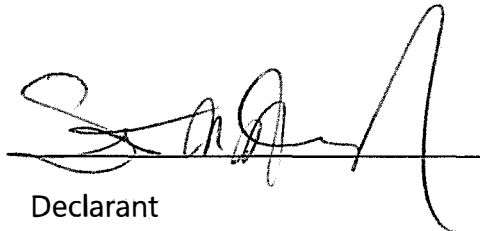
(City)

(County)

(State)

(ZIP Code)

I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the facts stated in this document are true and correct.



Declarant

Executed on June 23, 2022.

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