

No. 2023-7781

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

**Date: 2/9/2023**

**Subject Considered:**

Employers Assurance Company  
PO Box 539004  
Henderson, Nevada 89053-9004

Consent Order  
DWC Enforcement File No. 30481

**General remarks and official action taken:**

This is a consent order with Employers Assurance 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 2007, 2009, 2010, 2012, 2014, and 2016, Performance Based Oversight (PBO) assessments. Respondent was not selected to be tiered in 2018, 2020, or 2022, PBO assessments.

DWC Audit No. MBP-22-102

3. On [REDACTED] DWC initiated DWC Audit No. MBP-22-102 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. One bill failed to meet selection criteria and was dropped from the audit sample. The remaining 99 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 medical 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 Pay Medical Bills

6. Respondent failed to timely process 7.07% of the initial medical bills within 45 days of receiving the bill (7 out of 99).
7. Specifically, Respondent issued payments to health care providers less than 14 days late in five instances and more than 15 days late in two instances.

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

8. Respondent failed to timely report the Rendering Line Provider NPI for 9.09% of the examined bills (9 out of 99).
9. Respondent failed to accurately report the Rendering Line Provider State License Number for 6.06% of the examined bills (6 out of 99).
10. Respondent failed to accurately report the Referring Provider Last/Group Name for 25.25% of the examined bills (25 out of 99).

11. Respondent failed to accurately report the Referring Provider State License Number for 30.03% of the examined bills (30 out of 99).
12. Respondent failed to accurately report the Date Bill Received for 5.05% of the examined bills (5 out of 99).
13. Respondent failed to accurately report the Date Bill Paid or Denied for 22.22% of the examined payments (22 out of 99).
14. Respondent failed to timely report the Date Bill Paid or Denied for 2.02% of the examined payments (2 out of 99).

### **Assessment of Sanction**

1. Prompt processing and payment of medical bills is imperative to DWC's goal of ensuring that injured employees have access to prompt, high-quality medical care.
2. DWC relies on medical bill payment information insurance carriers submit for many 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.
3. DWC relies on claims information insurance carriers submit for many purposes, including, but not limited to, providing required information and reports to the Legislature, ensuring that insurance carriers comply with the Texas Labor Code and DWC rules, and detecting patterns and practices in actions taken on claims.
4. 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 EDI 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.
5. 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; whether the administrative violation had a negative impact on the delivery of benefits to an injured employee; and other matters that justice may require, including the size of the company or practice.
6. DWC considered as mitigating the following factors pursuant to Tex. Lab. Code § 415.021(c) and 28 Tex. Admin. Code § 180.26(e): Respondent's minimal disciplinary history, and prompt and earnest actions to prevent future violations. Specifically, after reviewing the audit results with adjusters, Respondent initiated claim handling changes, provided supplemental training, added additional supervisory oversight, and reduced each auditor's claim count. Respondent has also reviewed the audit with their EDI vendor, and is operating an internal audit program.
7. 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).
8. 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**

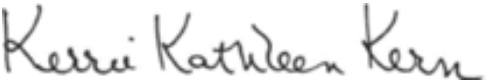
1. The commissioner has jurisdiction over this matter pursuant to Tex. Lab. Code §§ 402.001, 402.00114, 402.00116, 402.00128, and 414.002.
2. The commissioner has the authority to dispose of this case informally pursuant to Tex. Gov't Code § 2001.056, Tex. Lab. Code §§ 401.021 and 402.00128(b)(6)-(7), 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) and (22), an insurance carrier or its representative commits an administrative violation each time it violates a DWC rule or fails to comply with a provision of 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 receiving the bill.
7. Respondent violated Tex. Lab. Code §§ 408.027, 415.002(a)(20) and (22), and 28 Tex. Admin. Code § 133.240 each time it failed to timely process a properly completed medical bill within 45 days of receiving the bill.
8. Pursuant to 28 Tex. Admin. Code § 134.804(d), insurance carriers are responsible for timely and accurately submitting medical EDI records to DWC.
9. Respondent violated Tex. Lab. Code § 415.002(a)(20) and 28 Tex. Admin. Code § 134.804(d) each time Respondent failed to submit timely and accurate medical EDI records to DWC.

**Order**

It is ordered that Employers Assurance Company must pay an administrative penalty of \$2,500 within 30 days from the date of this order. Employers Assurance 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.

  
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Jeff Nelson  
Commissioner  
TDI, Division of Workers' Compensation

Approved Form and Content:

  
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Kathleen Kern  
Staff Attorney, Enforcement  
Compliance and Investigations  
TDI, Division of Workers' Compensation

**Unsworn Declaration**

**STATE OF**  Nevada

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**COUNTY OF**  Clark

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Pursuant to the Tex. Civ. Prac. and Rem. Code § 132.001(a), (b), and (d), my name is  Kelly Spina . I hold the position of  Claim Director  and am the authorized representative of Employers Assurance Company. My business address is:

2340 Corporate Circle, Suite 200 ,  Henderson ,  Clark ,  NV ,  89074 .

(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.

Kelly Spina

Declarant

Executed on  February 6 , 2023.